

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

**No. 75-4089**

**No. 75-4121**

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

AMERICAN BROADCASTING COMPANIES, INC., CBS,  
INC., and NATIONAL BROADCASTING COMPANY,  
INC.,

*Petitioners,*

and

ASSOCIATION OF MOTION PICTURE AND TELEVISION  
PRODUCERS, INC.,

*Intervenor,*

vs.

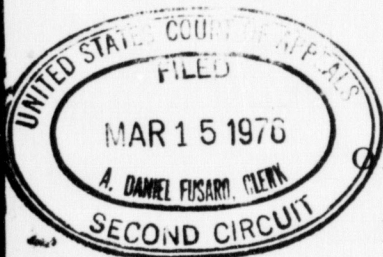
NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

(Continued on inside cover)

**On Petition for Review and Application for Enforcement of an  
Order of the National Labor Relations Board.**

**APPENDIX.**



MELVENY & MYERS,  
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Los Angeles, Calif. 90017.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

NATIONAL LABOR RELATIONS BOARD,

and

*Petitioner,*

AMERICAN BROADCASTING COMPANIES, INC., CBS,  
INC., and NATIONAL BROADCASTING COMPANY,  
INC.,

*Intervenors,*

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

*Respondent.*

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PAGINATION AS IN ORIGINAL COPY

## LIST OF RELEVANT DOCKET ENTRIES

(N.B.: Only those items marked by an asterisk were designated by the parties to appear in this appendix)

1. Unfair Labor Practice Charge Filed by Association Against Guild Alleging Violation of Section 8(b)(1)(B), Dated March 8, 1973 (31-CB-1203-2).
2. Unfair Labor Practice Charge Filed by Networks Against Guild Alleging Violation of Section 8(b)(1)(B), Dated April 4, 1973 (31-CB-1223).
3. Order of NLRB Consolidating Cases, Consolidated Complaint and Notice of Hearing Dated April 18, 1973.
- \*4. NLRB Motion to Amend Complaints and Second Consolidated Amended Complaint, Dated December 11, 1973 .....App. p. 2
- \*5. Guild's Answer to Second Consolidated Amended Complaint, Dated December 13, 1973 ..... 24
- \*6. Stipulation of Facts, Dated December 17, 1973 ..... 29
- \*7. Order Transferring Proceeding to the National Labor Relations Board, Decision of Administrative Law Judge Sidney J. Barban, Dated September 18, 1974 ..... 41
- \*8. Guild's Brief in Support of Exceptions to Administrative Law Judge's Decision, Dated November 27, 1974 ..... 116
- \*9. Decision and Order of the NLRB, Dated May 15, 1975 ..... 122



Nos. 75-4089, 75-4121

IN THE

# United States Court of Appeals

FOR THE SECOND CIRCUIT

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AMERICAN BROADCASTING COMPANIES, INC., CBS,  
INC., and NATIONAL BROADCASTING COMPANY,  
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ASSOCIATION OF MOTION PICTURE AND TELEVISION  
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*Intervenor,*

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NATIONAL LABOR RELATIONS BOARD,

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NATIONAL LABOR RELATIONS BOARD,

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AMERICAN BROADCASTING COMPANIES, INC., CBS,  
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WRITERS GUILD OF AMERICA, WEST, INC.,

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**On Petition for Review and Application for Enforcement of an  
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**APPENDIX.**

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#### **APPENDIX 4.**

##### **Motion to Amend Complaints.**

United States of America, Before the National Labor Relations Board, Division of Judges.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355.

Comes now Counsel for the General Counsel and moves to amend all outstanding complaints heretofore issued in the above-captioned matters in the following manner:

Substitute the attached Second Consolidated Amended Complaint for all complaints heretofore issued in the captioned cases.

All parties were served copies of the attached Second Consolidated Amended Complaint by registered mail on or about December 11, 1973 and no objections to said Second Consolidated Amended Complaint were raised by any of the parties hereto.

DATED at Los Angeles, California, this 11th day of December 1973.

Respectfully submitted,

/s/ Philip R. LeVine

Philip R. LeVine

Counsel for the General Counsel

National Labor Relations Board

Region 31



**Second Consolidated Amended Complaint.**

United States of America, Before the National Labor Relations Board, Division of Judges.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355.

It having been charged by Association of Motion Picture and Television Producers, Inc., herein called the Association, in Cases Nos. 31-CB-1203-2 and 31-CB-1316, and by American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; and National Broadcasting Company, Inc., herein called respectively American, Columbia and National, in Cases Nos. 31-CB-1223 and 31-CB-1313, and by QM Productions, herein called QM, in Case No. 31-CB-1355 that Writers Guild of America, West, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as

amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Second Consolidated Amended Complaint and alleges as follows:

1. (a) The charge in Case No. 31-CB-1203-2 was filed by the Association on March 8, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(b) The charge in Case No. 31-CB-1316 was filed by the Association on July 16, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(c) The charge in Case No. 31-CB-1223 was filed by American, Columbia, and National on April 4, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(d) The charge in Case No. 31-CB-1313 was filed by American, Columbia and National on July 11, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(e) The charge in Case No. 31-CB-1355 was filed by QM on September 5, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

2. (a) The Association is now, and at all times material herein has been, an incorporated employer association with its principal place of business at Los Angeles, California, which admits to membership firms

engaged in the production and distribution of motion picture and television films and which exists in part for the purpose of negotiating, executing and administering multi-employer collective-bargaining agreements on behalf of its employer-members with the collective-bargaining representatives of their employees, including the Respondent.

(b) The employer-members of the Association, annually, in the course and conduct of their business operations, collectively, sell and ship from their studios in California, directly to points outside the State of California, motion picture films and other products valued in excess of \$50,000.

(c) American, a New York corporation, with offices in various locations throughout the United States, including Los Angeles, California, is engaged in the production and broadcasting of television programs.

(d) American, annually, in the course and conduct of its business at its Los Angeles, California location, derives gross revenues in excess of \$100,000 from sales made to customers located outside the State of California, and annually purchases goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

(e) Columbia, a New York corporation with offices located in various locations throughout the United States, including Los Angeles, California, is engaged in the production and broadcasting of television programs.

(f) Columbia, annually, in the course and conduct of its business at its Los Angeles, California location, derives gross revenues in excess of \$100,000 from sales made to customers located outside the State of

California, and annually purchases goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

(g) National, a Delaware corporation with offices located in various locations throughout the United States, including Burbank, California, is engaged in the production and broadcasting of television programs.

(h) National, annually, in the course and conduct of its business at its Burbank, California location, derives gross revenues in excess of \$100,000 from sales made to customers located outside the State of California and annually purchases goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

(i) QM is now, and has been at all times material herein, a California corporation, with its principal place of business in Burbank, California, where it is engaged in the production and distribution of motion picture and television films.

(j) Annually, in the course and conduct of its business operations at its Burbank, California location, QM sells television and motion picture films valued in excess of \$50,000 directly to customers located outside the State of California.

3. The Association, through its employer-members, American, Columbia and National, and QM, each is now, and at all times material herein each has been, an employer engaged in commerce, and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Association, through its employer-members, American, Columbia and National, and QM, each



is now, and at all times material herein each has been, an Employer within the meaning of Section 2(2) and 8(b)(1)(B) of the Act.

5. Respondent is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) and Section 8(b) of the Act.

6. At all times material herein, the following named persons occupied the positions set forth opposite their respective names, and at all times material herein, were agents of Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act:

Ranald MacDougall—President  
Michael H. Franklin—Executive Director  
Alan Griffiths—Assistant Executive Director  
Carey Wilber—Co-Chairman of Strike Committee  
Patty (last name unknown)—Member of Strike Committee  
John Furia—Television Radio President (Now President of Respondent)  
Harlan Ellison—Member of Council of Respondent  
Brad Radnitz—Member of Council of Respondent  
John Mendonsa—Attorney for Respondent  
Emmett Lavery—Member of Trial Committee  
Irma Kalish—Member of Trial Committee  
Nate Monaster—Member of Trial Committee  
Barry Oringer—Member of Trial Committee  
James Poe—Member of Trial Committee  
Christopher Knopf—Member of Trial Committee  
Michael Blankfort—Member of Trial Committee  
Jack Ellinson—Member of Trial Committee  
Millard Kaufman—Member of Trial Committee

7. Respondent is now, and has been at all times material herein, the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of the employees in various appropriate units, employed by the Association members at their respective studios, by American, Columbia and National at their respective studios and by QM at its studios.

8. (a) Up to and including March 4, 1973, Respondent and the Association were parties to a written collective-bargaining agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement" dealing with rates of pay, wages, hours of employment and other terms and conditions of employment, of the employees in the appropriate unit described in paragraph 7 above, which agreement by its terms was effective from June 16, 1970 to June 15, 1973, but which was terminated on March 4, 1973, by Respondent, pursuant to the terms of the Agreement.

(b) At all times material herein American, Columbia and National comprised a multi-employer bargaining unit, and up to and including March 4, 1973, were parties with Respondent to a written collective-bargaining agreement, which was entitled "Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks," dealing with rates of pay, wages, hours of employment and other terms and conditions of employment, for the employees in the appropriate unit for each respective employer as described above in paragraph 7, and which agreement was effective from June 16, 1970 to June 15, 1973, but which was terminated by Respondent on March 4, 1973, pursuant to the terms of such Agreement.

(c) At all times material herein, American, Columbia and National comprised a multi-employer bargaining unit, and up to and including February 13, 1973, were parties with Respondent to a written collective-bargaining agreement, which was entitled "1971 Writers Guild of America Television Freelance Minimum Basic Agreement," dealing with rates of pay, wages, hours of employment and other terms and conditions of employment for the employees in the appropriate unit as described above in paragraph 7, and which agreement was effective by its terms from October 1, 1971 to February 13, 1973.

(d) Up to and including March 4, 1973, Respondent and QM were parties to a written collective-bargaining agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement" dealing with rates of pay, wages, hours of employment and other terms and conditions of employment of the employees in the appropriate unit described above in paragraph 7, which agreement was effective from June 16, 1970, to June 15, 1973, but which was terminated on March 4, 1973, by Respondent pursuant to the terms of the Agreement.

9. (a) At all times material herein, the Association, through its employer-members, American, Columbia and National, employed, and presently employ, persons in the classifications set forth below, which persons were, and are, also members of Respondent in good standing, and such persons at all times material herein have been, and are now, supervisors of their respective employers within the meaning of Section 2(11) of the Act, and are representatives or potential and likely representatives for their respective employers for the



purposes, among others, of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B):

- Producer
- Director
- Executive Producer
- Associate Producer
- Producer Director
- Research Director
- Executive Assistant to the Vice President
- Vice President for Program Production
- Vice President for Production
- General Programming Executive
- Vice President of Program Development
- Manager of Film Programs
- Story Editor
- Executive Story Editor
- Executive Story Consultant

(b) At all times material herein, QM employed Robert Blees in the classification of Executive Story Consultant, said Blees also being a member of Respondent in good standing.

(c) Blees was, at all times material herein, a supervisor of QM within the meaning of Section 2(11) of the Act, and a representative or a potential and likely representative of QM for the purposes, among others, of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

10. (a) Commencing on or about March 4, 1973, and continuing to June 24, 1973, Respondent engaged in a strike against the Association and its member-



employers, and established and maintained a picket line at certain of the premises of struck Association member-employers to protest its dispute with the Association and its member-employers concerning contract negotiations with said Association.

(b) Commencing on or about March 29, 1973, and continuing to July 12, 1973, Respondent engaged in a strike against American, Columbia and National, and established and maintained a picket line at the premises of each said struck employer to protest its dispute with said employer concerning contract negotiations with each said employer for a new agreement to replace the terminated Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks.

(c) Commencing on or about April 12, 1973, and continuing to July 12, 1973, Respondent engaged in a strike against American, Columbia and National and established and maintained a picket line at the premises of each said struck employer to protest its dispute with said employer concerning contract negotiations with each said employer for a new agreement to replace the expired 1971 Writers Guild of America Television Freelance Minimum Basic Agreement.

(d) Commencing on or about March 4, 1973, and continuing to March 17, 1973, Respondent engaged in a strike against QM, and established and maintained a picket line at the premises of QM to protest its dispute with QM concerning contract negotiations with said QM.

11. In late February 1973, the exact date presently unknown, Respondent prepared, published and distrib-

uted Rules for the Conduct of Members During a Strike, which rules are attached hereto and designated as Exhibit I and made a part hereof, to all its members, including those members occupying the positions designated in paragraph 9 above.

12. In February 1973, the exact date presently unknown, Respondent held a meeting attended by a number of members occupying the positions designated in paragraph 9 above, at which meeting Respondent, by Michael Franklin, announced that the strike rules applied to all members.

13. (a) Commencing on or about March 13, 1973, Respondent, through its agent Alan Griffiths, by telegram, threatened to discipline various of its members occupying positions described in paragraph 9 above, if they continued to cross the picket line and work for their respective employer in any capacity.

(b) Commencing on or about March 5, 1973, Respondent, through its agents, Carey Wilber, Alan Griffiths, Patty (last name unknown), John Furia, Harlan Ellison, and Brad Radnitz and by others presently unknown, by telephone, threatened numerous members occupying the positions set forth in paragraph 9 above, with fines and other disciplinary action if they continued to cross the picket line to perform work in any capacity for their respective employer.

(c) Commencing on or about April 6, 1973, Respondent issued Notices of Disciplinary Hearings and Charges against numerous persons occupying the positions set forth in paragraph 9 above, charging them with violating certain of the rules set forth in the Rules for the Conduct of Members During a Strike as set forth

in paragraph 11 above, and ordering said persons to appear before a disciplinary board of Respondent on the date set forth in said Notice of Disciplinary Hearing and Charges.

(d) Commencing in late February 1973, the exact date presently unknown, Respondent, through promulgation of its strike rules, as alleged in paragraph 11 above, and specifically Rule 30 thereof, and by other actions including press releases published by *Daily Variety* and other publications, and by direct personal communications by telephone as alleged in paragraph 13(b) above, threatened numerous persons occupying the positions set forth in paragraph 9 above, that for all times in the future no member of Respondent would work with or perform services for them if they failed to honor or otherwise support the strike described in paragraph 10 above.

(e) Commencing on or about May 21, 1973, and continuing thereafter to date, Respondent, pursuant to the Notices of Disciplinary Hearings and Charges alleged in paragraph 13(c) above, commenced or initiated intra-union trials, on the charges filed against numerous persons occupying the positions set forth in paragraph 9 above.

(f) Commencing on or about June 25, 1973, and continuing thereafter to date, Respondent, in the circumstances described above in subsections 13(c) and (e), fined the persons named below, and others, who occupy the positions set forth in paragraph 9 above the amount set forth opposite their respective names and expelled them from membership in the Respondent because said persons crossed Respondent's picket lines to perform their supervisory and managerial functions

in violation of Respondent's strike rules described above in paragraph 11:

David Victor—\$50,000 plus costs  
Jon Epstein—\$2,000 plus costs  
Herman Saunders—\$100 plus costs  
John Mantley—\$50,000 plus costs  
Robert Blees—\$25,000 plus costs  
Barry Crane—\$10,000 plus costs

(g) Commencing on or about June 25, 1973, and continuing thereafter to date, Respondent, in the circumstances described above in paragraph 13(c) and (e) fined the persons named below, and others, who occupy the positions set forth in paragraph 9 above the amount set forth opposite their respective names, and suspended them from membership in the Respondent for the period set forth opposite the amount of their fine because said persons crossed Respondent's picket lines to perform their supervisory and managerial functions in violation of Respondent's rules described above in paragraph 11.

David Levinson \$10,000 plus costs—2 years  
Robert Cinader \$5,000 plus costs—3 years  
Hugh Benson \$100 plus costs—2 years

14. By the acts and conduct described above in paragraphs 11, 12 and 13, and by each of said acts and conduct, in the circumstances described above in paragraphs 9 and 10, Respondent did restrain and coerce, and is now restraining and coercing the Association and its member-employers, American, Columbia and National, and QM in the selection and retention of their representatives for the purposes of collective bargaining or the adjustment of grievances, and Re-



spondent did thereby engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

15. The acts and conduct of Respondent described above in paragraphs 11 through 14, occurring in connection with the operations of the Association and its member-employers, American, Columbia and National, and QM, described in paragraphs 2 through 4 above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts and conduct of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(B) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Second Consolidated Amended Complaint to be signed and issued this date.

/s/ Abraham Siegel  
Abraham Siegel  
Regional Director  
National Labor Relations Board  
Region 31  
12th Floor, Federal Building  
11000 Wilshire Boulevard  
Los Angeles, California 90024

Dated at Los Angeles, California, this 11th day of December 1973.

EXHIBIT I

WRITERS GUILD OF AMERICA, WEST

February 20, 1973

*RULES FOR THE CONDUCT OF MEMBERS DURING A STRIKE*

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
2. Writing for any struck producer as designated in a restraining order is prohibited. The term producer includes any employer or potential employer, whether studio, individual, production company network or any representative or subsidiary or associate thereof.
3. Writing for a struck producer is prohibited even though the member be employed by or under assignment to the said producer at the time the strike is called, regardless of the capacity in which the member is employed.
4. Writing for a struck producer will cease immediately upon the calling of the strike, regardless of the extent of the work already completed for said producer as the result of employment commenced prior to the date of the strike.
5. The prohibition against writing for a struck producer obtains regardless of the place at which writing might be done, i.e., whether on or off the premises of the producer.

6. No delivery of literary material shall be made to a struck producer regardless of when it was written, solicited, contracted or paid for.
7. The submission of literary material to a struck producer is prohibited even though neither negotiation for nor consummation of a sale is contemplated until after settlement of the strike.
8. Members shall file with the Guild copies of all literary material completed for and delivered to a struck producer as of the calling of the strike in order that they may be on record with evidence to substantiate their timely work stoppage in the event this matter comes into issue.
9. Immediately upon the calling of a strike members are to inform their agents or any other representatives of all the Guild's strike rules and revoke or suspend as to a struck producer any authorization for representation, either for the sale of material or for services for the duration of the strike.
10. Immediately upon the calling of a strike each member must serve written notice upon each struck producer who may at that time have in his possession any literary material owned by the member. A copy of such notice is to be sent to the Guild. Notice shall be in the following form:  
"I hereby demand that you promptly return to me the following named literary material currently in your possession and owned by me:  
(Title of Material)  
(Signature)"

11. Members are prohibited from engaging in any conference, negotiations, discussions or meeting of any kind, whether in person, by telephone or through the mail, or through an agent or other representative, with any struck producer, his employees, associates, subsidiaries and/or representatives regarding the sale of any literary material or any contract for writing services even though the effective date of such proposed agreement be scheduled for a time after the settlement of the strike.
12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.
14. Members may not accept from a struck producer for reading, perusal, study or any other purpose any sample script, format, presentation or literary material of any nature which might have any actual or potential connection with future employ-



ment of said members as writers or otherwise even though such services are to begin after the conclusion of the strike.

15. The use of a fictitious name of any kind as a means of circumventing strike rules and regulations is prohibited whether or not it be registered with the Guild.
16. The commencement of an assignment for a struck producer or the sale of literary material to a struck producer so soon after the settlement of a strike as fairly to give rise to the inference that negotiations for same have been conducted during the course of the strike shall be cause for investigation and is disciplinable, if evidence supports such inference.
17. The acts of any agent or other representative acting on behalf of a member will be imputed to the member in the absence of satisfactory evidence to the contrary.
18. Any agreement entered into by a member prior to the commencement of a strike but in anticipation thereof for the sale or delivery of literary material not then written but to be delivered after the settlement of the strike is forbidden.
19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.
20. Every member has the duty of reporting to the Guild the name of any agent or producer or person or entity affiliated with the production,

administration or management of a struck producer or company who, in disregard of an existing strike, solicits material from, or the employment of such member or any other member, or otherwise seeks to entice a member into violating the strike rules or regulations.

21. No member, his good intentions granted, may negotiate or seek to negotiate with any struck producer the settlement of a strike or any phase thereof.
22. A member is chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communication such as trade papers, newspapers, radio broadcasts or telecasts, etc., unless he offers satisfactory evidence that it was impossible for him to receive such strike information.
23. Writers who are not members of the Guild, but who are reasonably chargeable with knowledge that the Guild is on strike or anticipates striking certain producers, who nevertheless write for or sell literary material to struck producers, or who in any way act to defeat the best interests of the Guild during a strike, will be excluded from membership in the organization.
24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing.

25. A member may not, during a strike, attempt to solicit or negotiate in behalf of a struck producer for the services of a writer, whether a member or not, or for the purchase of literary material, whether or not written by a member.
26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.
27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectable in a suit at law.
28. The Guild shall have authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than \$100 per day for each day of such refusal to perform.
29. The following is excerpted from Article X, Paragraph A of the Guild Constitution and By-Laws. "Any member of the Guild who shall be found

guilty, after a hearing conducted in accordance with the procedures herein prescribed, of any act or failure to act, or any conduct which is prejudicial to the welfare of the Guild, or any of its Branches . . . or of failing to observe the Constitution and By-Laws of this Guild or any lawful order of the Council or of a Branch Board . . . may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign or in lieu thereof, or in addition thereto, he may be censured, fined or otherwise disciplined."

30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person.
31. Enforcement of these rules may be delegated to such committee or committees as the Council may designate.



## **APPENDIX 5.**

### **Answer to Second Consolidated Amended Complaint.**

United States of America, Before the National Labor Relations Board, Region 31.

Writers Guild of America, West, Inc., and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc., and American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; National Broadcasting Company, Inc. Case No. 31-CB-1223.

Respondent answers the Second Consolidated Amended Complaint as follows:

1. Admits the allegations set forth in numbered paragraphs and sub-paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 13(a), (b), (c) and (e).

2. Denies, generally and specifically, the allegations set forth in numbered paragraphs 13(d), 14, 15 and 16.

3. Answering paragraph 9(a):

Admits that at all times material herein, the Association, through its employer-members, and American, Columbia and National, employed, and presently employ, persons in the classifications set forth in the paragraph;

Lacks knowledge as to whether all of such persons were and are members of Respondent in good standing but has supplied this information upon request at the hearing with respect to each such person identified by the General Counsel.

Denies, generally and specifically, that these persons are supervisors of their respective employers within Section 2(11) of the Act;

Denies, generally and specifically, that such persons are representatives or potential or likely representatives for their respective employers for the purpose of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

4. Admits the allegations set forth in paragraphs 10(a), (b), (c) and (d), with the qualification that picket lines were established on March 4, 1973 and the further qualification that some, but not all, of the member-employers of the Association have been picketed at various times since March 4, 1973.

5. Answering sub-paragraphs 13(f) and (g):

Admits the allegations set forth in each of these sub-paragraphs with the following qualifications:

(a) By subsequent actions of the membership and Board of Directors of the Respondent the suspensions and expulsions of the named individuals were and are vacated and the fines set forth in these sub-paragraphs were substantially reduced in amount.

(b) The named individuals were subjected to disciplinary proceedings because they crossed Respondents picket lines without regard to the type of services or functions which said individuals claimed that they intended to perform for Respondents during the strike.

(c) Pursuant to constitutional powers vested in the Board of Directors of Respondent, said Board has stayed the collection of the reduced fines of each of the named individuals set forth in these sub-paragraphs and has offered to stay the processing of all

other intra-union charges pending against all other members who occupy positions set forth in paragraph 9 of the Second Consolidated Amended Complaint. Such stay, by its terms, if accepted by the affected members, will remain in effect until a final decision is rendered by the Courts on the unfair labor practice charges which initiated the present unfair labor practice proceedings.

#### FIRST SEPARATE SPECIAL DEFENSE

By the terms and provisions of their respective collective bargaining agreements (described in paragraphs (a), (b) and (c) of the Second Consolidated Amended Complaint) the Employer charging parties have, through bona fide collective bargaining with the Guild, legally waived and given up any legal right they may have had or now claim to have to designate any of the members of the Guild as their representatives for the purpose of collective bargaining or the adjustment of grievances during the current strike.

#### SECOND SEPARATE SPECIAL DEFENSE

By the terms and provisions of their respective collective bargaining agreements, referred to above, the Employer charging parties have expressly agreed that members of the Guild, including members who may at the time of or during a strike be assigned supervisory duties, may respect the Guild's strike call, refuse to cross picket lines or perform any service during the strike and be subject to Guild discipline for crossing picket lines or working for struck employers during any strike such as the current one described in the Second Consolidated Amended Complaint.

### THIRD SEPARATE SPECIAL DEFENSE

In accordance with grievance and arbitration provisions of its collective bargaining agreements, on April 28, 1973 Respondent mailed written grievances and requests for arbitration to the Employer charging parties requesting a prompt arbitration of the legal and factual issues set forth in the First and Second Separate Special Defenses, set forth above. More particularly, the issues which the Guild seeks to arbitrate with the Association are stated as follows:

- “1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and
2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threatened or imposed by the Guild on any of its members.”

The issues which the Guild seeks to arbitrate with American, Columbia and National are identical except the contract section references differ as to the agreement referred to in paragraph 8(c) of the Second Consolidated Amended Complaint.



In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof.

Dated: Los Angeles, California December 13, 1973.

Respectfully submitted,

LEVY, VAN BOURG & HACKLER,  
ESQS.

By: /s/ Charles K. Hackler  
CHARLES K. HACKLER

## **APPENDIX 6.**

### **Stipulation of Facts.**

United States of America, Before the National Labor Relations Board, Division of Judges.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355 Consolidated.

It is hereby stipulated by and among Counsel for the General Counsel of the National Labor Relations Board, herein called General Counsel, Writers Guild of America, West, Inc., herein called Respondent and Association of Motion Picture and Television Producers, Inc., American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Com-

pany, Inc., and QM Productions, herein called Charging Parties, being all parties to these proceedings as follows:

1. (a) Annually, in the course and conduct of its business operations, QM sells television and motion picture films valued in excess of \$50,000 directly to customers located outside the State of California.
- (b) QM is now, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
- (c) QM is now, and at all times material herein has been, an employer within the meaning of Section 8(b)(1)(B) of the Act.
2. At all times material herein, it has been the policy of Respondent not to permit any member to resign from membership in the Guild during the pendency of collective-bargaining negotiations between the Respondent and the Charging Parties and for at least six months after the conclusion of such negotiations.
3. Respondent has issued Notices of Disciplinary Hearing and Charges against the following of its members based on said members' conduct during Respondent's 1973 strike against Charging Parties herein, said members' names also appearing on G. C. Exhibit 3. Said charges are attached hereto and incorporated herein as G. C. Exhibits 15A-W inclusive.

| NAME               | EXHIBIT NUMBER |
|--------------------|----------------|
| Hugh Benson        | 15A            |
| Jerome Bredouw     | 15B            |
| Robert Blees       | 15C            |
| Robert Cinader     | 15D            |
| Ron Honthamer      | 15E            |
| Leonard Katzman    | 15F            |
| David Levinson     | 15G            |
| William Roberts    | 15H            |
| Albert Ruddy       | 15I            |
| Coles Trapnell     | 15J            |
| Herbert Wright     | 15K            |
| Stephen Heilpern   | 15L            |
| James McAdams      | 15M            |
| Martin Ransohoff   | 15N            |
| Andrew J. Fenady   | 15O            |
| Thomas Leetch      | 15P            |
| Thomas L. Miller   | 15Q            |
| Cy Chermack        | 15R            |
| Frank Paris        | 15S            |
| Larry Gordon       | 15T            |
| Jack Haley, Jr.    | 15U            |
| Philip Kaufman     | 15V            |
| David S. Peckinpah | 15W            |

4. Respondent held disciplinary trials based upon the charges as noted in paragraph 3 above. The transcripts of said trials are attached hereto and incorporated herein as G. C. Exhibits 16A-Q inclusive.

| NAME           | EXHIBIT NUMBER |
|----------------|----------------|
| Cy Chermack    | 16A            |
| Robert Cinader | 16B            |
| Jerome Bredouw | 16C            |
| Jon Epstein    | 16D            |



| NAME             | EXHIBIT NUMBER |
|------------------|----------------|
| Michael Crichton | 16E            |
| Hugh Benson      | 16F            |
| David Levinson   | 16G            |
| William Roberts  | 16H            |
| Albert Ruddy     | 16I            |
| Herman Saunders  | 16J            |
| Frank Paris      | 16K            |
| Coles Trapnell   | 16L            |
| Robert Blees     | 16M            |
| John Mantley     | 16N            |
| David Victor     | 16O            |

5. Respondent's Board of Directors based upon the charges as noted in paragraph 3 above and the hearings as noted in paragraph 4 above issued the following decisions in said cases which are attached hereto and incorporated herein as G. C. Exhibits 17A to I inclusive.

| NAME            | EXHIBIT NUMBER |
|-----------------|----------------|
| Hugh Benson     | 17A            |
| Robert Blees    | 17B            |
| Cy Chermack     | 17C            |
| Jon Epstein     | 17D            |
| David Levinson  | 17E            |
| John Mantley    | 17F            |
| Herman Saunders | 17G            |
| David Victor    | 17H            |
| Robert Cinader  | 17I            |

6. Respondent has issued internal disciplinary charges, conducted trials, and imposed penalties as indicated hereinbelow upon persons employed in the positions referred to in paragraph 9 of the Second

Consolidated Amended Complaint of November 26, 1973, all of whom were members of the Respondent at the time charges were preferred against them, and to all of whom Respondent mailed its Strike Order and Strike Rules:

(a) Barry Crane, Producer/Director for Paramount was charged by Respondent's Board of Directors on July 27, 1973, which charge is attached hereto and incorporated herein as G. C. Exhibit 18; was tried before a Trial Committee of Respondent on August 15, 1973 and fined \$10,000 and expelled from membership by Respondent's Board of Directors on August 31, 1973, whose decision is attached hereto and incorporated herein as Exhibit 19.

(b) Roger Lewis, Producer for Metro-Goldwyn-Mayer, Inc. was charged by Respondent's Board of Directors on November 8, 1973, which charge is attached hereto and incorporated herein as G. C. Exhibit 20, and is scheduled to be tried before a Trial Committee of Respondent on December 18, 1973.

(c) Mark Rosin, whose name is to be added to G. C. 3 as General Programming Executive for Columbia Broadcasting System, Inc., was charged by Respondent's Board of Directors on November 8, 1973, which charge is attached hereto and incorporated herein as G. C. Exhibit 21, and was scheduled to be tried before a Trial Committee of Respondent on November 29, 1973.

(d) Philip Barry, Executive Producer for Columbia Broadcasting System was charged by Respondent's Board of Directors on November 6, 1973, which charge is attached hereto and incorporated herein as G. C.

Exhibit 22, and is scheduled to be tried before a Trial Committee of Respondent on December 13, 1973.

7. (a) Further scheduled internal proceedings of Respondent with respect to the above-described disciplinary proceedings are as follows: appeals from decisions of the Respondent's Board of Directors in the cases of Robert Blees, Jon Epstein, John Mantley, Herman Saunders and David Victor, were scheduled to be heard before a special membership meeting of the Writers Guild of America, West, Inc., on November 12, 1973. Said notices of appeal are attached hereto and incorporated herein as General Counsel Exhibits 23 A-H inclusive.

| NAME            | EXHIBIT NUMBER |
|-----------------|----------------|
| Robert Blees    | 23A            |
| Jon Epstein     | 23B            |
| John Mantley    | 23C            |
| Herman Saunders | 23D            |
| David Victor    | 23E            |
| David Levinson  | 23F            |
| Robert Cinader  | 23G            |
| Hugh Benson     | 23H            |
| Barry Crane     | 23I            |

(b) An appeal was filed by Cy Chermack in the above-described disciplinary proceeding; however, said appeal at his request is not scheduled to be heard until the next scheduled general membership meeting of Respondent. A copy of said appeal is attached hereto and incorporated herein as General Counsel's Exhibit 23J.

8. Prior to the meeting as noted in paragraph 7 above, the Writers Guild sent to all of its members

an agenda of this meeting and an explanation of the forms of discipline which could be meted out to Guild members, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 12.

9. The Writers Guild on November 6, 1973, sent to all of its members a reminder of the meeting scheduled for November 12, 1973, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 13.

10. The Writers Guild gave to all of its members in attendance at the November 12, 1973 meeting an agenda and the procedural rules for this meeting, a copy of which is attached hereto and incorporated herein as G. C. Exhibit 24.

11. Writers Guild members in attendance at the November 12 meeting were given ballots in the cases of Robert Bles, Jon Epstein, John Mantley, Herman Saunders, David Victor, Hugh Benson, Robert Cinader, Barry Crane and David Levinson, an exemplar of which is attached hereto and incorporated herein as Respondent's Exhibit 14.

12. The Writers Guild sent to all of its members a letter dated November 26, 1973, which detailed the results of the proceedings at the November 12 meeting and the final disposition of the disciplinary proceedings as set forth in paragraph 7 above, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 15.

13. The Writers Guild, by letter dated November 30, 1973, offered to stay all further disciplinary proceedings against certain persons in the categories set forth in Paragraph 9 of the Second Amended Consoli-



dated Complaint, excluding those persons set forth in paragraph 7 above, pending resolution of consolidated National Labor Relations Board Cases Nos. 31-CB-1203-2, 31-CB-1223, 31-CB-1316, 31-CB-1313 and 31-CB-1355. An exemplar of said letter is attached hereto and incorporated herein as G. C. Exhibit 25.

14. The Writers Guild intends to offer to stay the payment of all fines by the persons set forth in paragraph 7 above, pending resolution of consolidated National Labor Relations Board Cases Nos. 31-CB-1203-2, 31-CB-1223, 31-CB-1316, 31-CB-1313 and 31-CB-1355, by letters similar to G. C. Exhibit 25. An exemplar of said letter is attached hereto and incorporated herein as Respondent's Exhibit 16.

15. The Writers Guild sent to all of its members a letter dated December 7, 1973, in which the Guild's position regarding the proposed stays was set forth, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 16.

16. At the outset of the Respondent's strike against the Charging Parties herein, said Charging Parties sent a copy of the attached letters to the persons on the list attached to each letter, said persons also being listed on General Counsel's Exhibit 3. Said letters and lists are attached hereto and incorporated herein as General Counsel's Exhibits 26 A-F inclusive.

| LETTER           | EXHIBIT NUMBER |
|------------------|----------------|
| 20th Century Fox | 26A            |
| Paramount        | 26B            |
| Screen Gems      | 26C            |
| Warner Bros.     | 26D            |
| MGM              | 26E            |
| Disney           | 26F            |

17. At the outset of the Respondent's strike against the Association herein, Bing Crosby Productions sent a letter to Andrew Fenady, which letter is attached hereto and incorporated herein as G. C. Exhibit 27.

18. Attached hereto and incorporated herein as G. C. Exhibit 28 is a true and correct copy of a memorandum sent by Robert D. Wood, President of CBS Television Network, on or about March 28, 1973, to all persons indicated in the letter from Jack B. Purcell to Richard Fisher dated November 28, 1973, a true and correct copy of which is attached hereto and incorporated herein as G. C. Exhibit 29. Said recipients of G. C. Exhibit 28 included all persons listed as Columbia Broadcasting Systems, Inc. personnel on G. C. Exhibit 3.

19. Attached hereto and incorporated herein as G. C. Exhibit 30 is a true and correct copy of a letter sent by Billy Gold, Vice President of QM Productions, on March 5, 1973, to Robert Blees, who was then employed by QM Productions in the capacity of Executive Story Consultant.

20. The evidence concerning the issues of the supervisory or management representative status of Robert Blees within the meaning of Sections 2(11) and 8(b) (1)(B) of the Act shall consist of Blees' personal service contract consisting of 2 letters, attached hereto and incorporated herein as Respondent's Exhibit 17 and in addition thereto such evidence shall be deemed to include the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of executive story consultants and executive story editors within the television production industry.

21. The evidence concerning the issues of the supervisory or management representative status of Hugh Benson and Roger Lewis within the meaning of Sections 2(11) and 8(b)(1)(B) of the Act shall be deemed to be the same as the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of producers within the motion picture industry.

22. The evidence concerning the issues of the supervisory or management representative status of Barry Crane within the meaning of Sections 2(11) and 8(b)(1)(B) of the Act shall be deemed to be the same as the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of producers and directors within the motion picture industry.

23. The evidence concerning the issues of the supervisory or management representative status of Andrew Fenady within the meaning of Sections 2(11) and 8(b)(1)(B) of the Act shall be deemed to be the same as the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of executive producers, producers and story editors within the motion picture industry.

24. The name of Jack Webb may be stricken from G. C. Exhibit 3 as will all references to Webb in the testimony taken in these proceedings.

25. Respondent by press release caused news of its fines, expulsions and other disciplinary measures to be published in editions of the Los Angeles Times, Daily Variety and the Hollywood Reporter dated June 27, 1973; the Hollywood Reporter and Daily Variety dated November 27, 1973; and the Hollywood Reporter

and Daily Variety dated December 7, 1973. Said articles are attached hereto and incorporated herein as G. C. Exhibits 31 to 33, inclusive, and Respondent's Exhibits 18 to 21, inclusive, respectively.

26. All documents attached hereto and incorporated herein are true, authentic and correct copies of said documents, and may be received into evidence.

DATED at Los Angeles, California, this 17th day of December, 1973.

Date December 17, 1973

/s/ Charles K. Hackler

Charles K. Hackler

Counsel for Respondent

Levy, Van Bourg & Hackler

3550 Wilshire Boulevard

Los Angeles, California 90010

Date December 18, 1973

/s/ Richard N. Fisher

Richard N. Fisher

Counsel for Charging Party Networks

O'Melveny & Myers

611 West Sixth Street

Los Angeles, California 90017

Date December 17, 1973

/s/ Philip R. LeVine

Philip R. LeVine

Counsel for the General Counsel

National Labor Relations Board

Region 31

11000 Wilshire Boulevard

Los Angeles, California 90024



Date December 17, 1973

/s/ Harry J. Keaton

Harry J. Keaton

Counsel for Charging Party Association

Mitchell, Silberberg & Knupp

1800 Century Park East

Los Angeles, California 90067

Date December 17, 1973

/s/ Larry A. Curtis

Larry A. Curtis

Counsel for Charging Party QM Productions

Musick, Peeler & Garrett

One Wilshire Boulevard

Los Angeles, California 90017

**APPENDIX 7.**

**Order Transferring Proceeding to the  
National Labor Relations Board.**

United States of America, Before the National Labor Relations Board.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case 31-CB-1355.

A hearing in the above-entitled proceeding having been held before a duly designated Administrative Law Judge and the Decision of the said Administrative Law Judge, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Section 102.45 of National Labor Relations Board Rules and

Regulations, that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., September 18, 1974.

By direction of the Board:

John C. Truesdale  
Executive Secretary

NOTE: Communications concerning compliance with the Decision of the Administrative Law Judge should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Rules and Regulations appearing on the page attached hereto.

Exceptions to the Decision of the Administrative Law Judge in this proceeding must be received by the Board in Washington, D. C., on or before *October 11, 1974.*

NATIONAL LABOR RELATIONS BOARD

Washington, D. C. 20570

NOTICE

It will be appreciated if any party to this proceeding who intends to file exceptions to the Decision of the Administrative Law Judge advises me of such intention as soon as possible. Such notice of intent is not required by the Rules and Regulations. No party, of course, will be prejudiced if plans change after advising me of intent. However, your cooperation in this regard is earnestly requested.

It is an advantage in scheduling the work of the Board for us to know at the earliest possible time whether or not exceptions are likely to be filed in a given case. All we need is a one-sentence letter or telegram giving the case name and number and simply stating that you will or will not file exceptions on behalf of the party you represent.

Such notice should be addressed to the undersigned at 1717 Pennsylvania Avenue, N. W., Washington, D. C. 20570.

John C. Truesdale  
Executive Secretary



EXCERPTS FROM RULES AND REGULATIONS  
OF NATIONAL LABOR RELATIONS BOARD  
SERIES 8, AS AMENDED

Sec. 102.46 *Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on parties; extension of time; effect of failure to include matter in exceptions; oral arguments.—*

(a) Within 20 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to section 102.45, any party may (in accordance with section 10(c) of the act and sections 102.113 and 102.114 of these rules) file with the Board in Washington, D.C., exceptions to the administrative law judge's decision or to any other part of the record or proceedings (including rulings upon all motions or objections), together with a brief in support of said exceptions. Any party may, within the same period, file a brief in support of the administrative law judge's decision. The filing of such exceptions and briefs is subject to the provisions of subsection (j) of this section. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served promptly on the other parties. Such requests must be received by the Board 3 days prior to the due date.

(b) Each exception (1) shall set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken; (2) shall identify that part of the administrative law judge's decision to which objection is made; (3) shall designate by precise citation of page the portions of the record relied on; and (4) shall state the grounds for the exceptions

and shall include the citation of authorities unless set forth in a supporting brief. Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A clear and concise statement of the case containing all that is material to the consideration of the questions presented.

(2) A specification of the questions involved and to be argued.

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(d)(1) Within 10 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with the provisions of subsection (j) of this section. The provision for 3 additional days as contained in section 102.114 shall be applicable to this subsection.

(2) The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied on in support of

the position taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's finding.

(3) Requests for extension of time to file an answering brief to the exceptions shall be in writing and copies thereof shall be served promptly on the other parties. Such requests must be received by the Board 3 days prior to the due date.

(e) Any party who has not previously filed exceptions may, within 10 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief, in accordance with the provisions of subsections (b) and (j) of this section. The provision for 3 additional days as contained in section 102.114 shall be applicable to this subsection.

(f)(1) Within 10 days, or such further period as the Board may allow, from the last date on which cross-exceptions and any supporting brief may be filed, any other party may file an answering brief to such cross-exceptions in accordance with the provisions of subsections (c) and (j) of this section. Such answering brief shall be limited to the questions raised in the cross-exceptions. The provision for 3 additional days as contained in section 102.114 shall be applicable to this subsection.

(2) Requests for extension of time to file cross-exceptions, or answering brief to cross-exceptions, shall

be in writing and copies thereof shall be served promptly on the other parties. Such requests must be received by the Board 3 days prior to the due date.

(g) No further briefs shall be filed except by special leave of the Board. Requests for such leave shall be in writing and copies thereof shall be served promptly on the other parties.

(h) No matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any further proceeding.

(i) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to the provisions of this section with a statement of service on the other parties. The Board shall notify the parties of the time and place of oral argument, if such permission is granted. . . .

(j) Exceptions to administrative law judge's decisions, or to the record, briefs in support of exceptions, and briefs in support of administrative law judge's decisions, cross-exceptions, and answering briefs shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, D.C., and copies shall also be served promptly on the other parties. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.



Sec. 102.47 *Filing of motion after transfer of case to Board.*—All motions filed after the case has been transferred to the Board pursuant to section 102.45 shall be filed with the Board in Washington, D.C., by transmitting eight copies thereof to the Board, together with an affidavit of service upon the parties. Such motions shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

Sec. 102.48 *Action of Board upon expiration of time to file exceptions to administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.*—(a) In the event no timely or proper exceptions are filed as herein provided, the findings, conclusions, and recommendations of the administrative law judge as contained in his decision shall, pursuant to section 10(c) of the act, automatically become the decision and order of the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

(b) Upon the filing of timely and proper exceptions, and any cross-exceptions, or answering briefs, as provided in section 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other Board agent or agency, or may make other disposition of the case.

(c) Where exception is taken to a factual finding of the administrative law judge, the Board, in determining whether the finding is contrary to a preponderance of the evidence, may limit its consideration to such

portions of the record as are specified in the exceptions, the supporting brief and the answering brief.

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing *de novo* and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion pursuant to this subsection shall be filed within 20 days, or such further period as the Board may allow, after the service of its decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly on discovery of such evidence. Any request for an extension of time must be received by the Board 3 days prior to the due date and copies thereof shall be served promptly on the other parties.

(3) The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Board unless so ordered. A motion for reconsideration or rehearing need not be filed to exhaust administrative remedies.

Sec. 102.111 *Service of process and papers; proof of service.*—(a) Charges, complaints and accompanying notices of hearing, final orders, administrative law judge's decisions, and subpoenas of the Board, its member, agent, or agency, may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

(b) Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement.

(c) Process and papers of the Board, other than those specifically named in subsection (a) of this section, may be forwarded by certified mail. The return post office receipt therefor shall be proof of service of the same.

Sec. 102.112 *Same; by parties; proof of service.*—Service of papers by a party on other parties shall be made by registered mail, or by certified mail, or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. Except for charges, petitions,



exceptions, briefs, and other papers for which a time for both filing and response has been otherwise established, service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditious manner; however, when filing with the Board is accomplished by personal service the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph. When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made in any manner provided by the law of a State, proof of service shall be made in accordance with such law. Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either (a) a rejection of the document or (b) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

Sec. 102.113 *Date of service; filing of proof of service.*—(a) The date of service shall be the day when the matter served is deposited in the United States mail or is delivered in person, as the case may be. In computing the time from such date, the provisions of section 102.114 apply.

(b) The person or party serving the papers or process on other parties in conformance with sections 102.111 and 102.112 shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in section 102.112 shall be required by the Board only if subsequent



to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

Sec. 102.114 *Time; additional time after service by mail or by telegraph.*—(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. For the purpose of this section a Saturday on which the Board's offices are not open for business shall be considered as a holiday, but a half holiday shall be considered as other days and not as a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail or by telegraph, 3 days shall be added to the prescribed period: *Provided however*, That 3 days shall not be added if any extension of such time may have been granted.

(b) When the act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

**Decision.**

United States of America, Before the National Labor Relations Board, Division of Judges, Washington, D.C.

Writers Guild of America, West, Inc., and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355.

*Philip R. LeVine, Esq.*, for the General Counsel.

*Charles K. Hackler, Esq.*, and *Gerald Goldman, Esq.* (*Levy, VanBourg & Hackler*), and *John A. Mendonsa, Esq.*, Los Angeles, Calif., for the Respondent.

*Harry J. Keaton, Esq.* (*Mitchell, Silberberg & Knupp; Andrew B. Kaplan, Esq.*, on the brief); *David G. Miller, Esq.* (*Loeb and Loeb*), Los Angeles, Calif.; for the Charging Party AMPTP.

*Richard N. Fisher, Esq.* (*O'Melveny & Myers; Raymond P. Hermann, Esq.*, on the brief), Los Angeles, Calif. for the Charging Party Networks.

## DECISION

### Statement of the Case

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Los Angeles, California, on several dates from May 21 until November 26, 1973.<sup>1</sup> The hearing was closed by an order dated January 25, 1974.

#### 1. Procedure

Upon a charge filed in Case No. 31-CB-1203-2, on March 8, against Writers Guild of America, West, Inc. (herein "Respondent") by Association of Motion Picture and Television Producers, Inc. (herein "AMPTP"), and a charge filed in Case No. 31-CB-1223, on April 4, against Respondent by American Broadcasting Companies, Inc. (herein "ABC"), Columbia Broadcasting System, Inc. (herein "CBS") and National Broadcasting Company, Inc. (herein "NBC") (herein jointly "the Networks"), the Regional Director for the Thirty-first Region, on April 18, issued an Order Consolidating Cases and a Consolidated Complaint against Respondent, which was amended by the issuance of a Consolidated Amended Complaint on May 23. Respondent filed timely answers. Hearing on this complaint was concluded on June 13.

Upon a charge filed in Case No. 31-CB-1313, on July 11, by the Networks, and a charge filed in Case No. 31-CB-1316, on July 16, by AMPTP against the Respondent, the Regional Director, on July 25, issued an Order consolidating those two cases and a Consolidated Complaint. Respondent filed timely answer. By a Joint Motion dated August 2, the parties requested

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<sup>1</sup>All dates herein are in 1973, unless otherwise noted.



that the four cases be consolidated, and the record reopened for further hearing. This motion was granted by order dated August 10.

Upon a charge filed in Case No. 31-CB-1355, on September 5, against Respondent by QM Productions (herein "QM"), the Regional Director, on September 20, issued a complaint in that case. Respondent filed timely answer. By motion dated November 9, General Counsel requested that Case No. 31-CB-1355 be consolidated for the purposes of hearing and decision with the four cases previously consolidated. On November 13, an Order to Show Cause why this motion should not be granted was issued. The motion was granted at the hearing held on November 26. Thereafter, General Counsel filed a motion dated December 11, to substitute a Second Consolidated Amended Complaint for all complaints previously issued in the above-captioned cases, to which Respondent filed an answer dated December 13. Finally, in lieu of further hearing in these matters, all parties submitted a stipulation of facts with exhibits attached, dated December 17. By Order dated January 25, 1974, General Counsel's motion to substitute the Second Consolidated Amended Complaint for all prior complaints was granted and the complaint and the answer thereto were received into the record, and the stipulation of facts, with specified exhibits, was received, the hearing in this proceeding was closed, and date set for receipt of briefs.<sup>2</sup>

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<sup>2</sup>Exhibit numbers have previously been assigned to all formal papers with the exception of my Order of January 25, 1974 and General Counsel's telegraphic response thereto, received February 4, 1974. The Order is hereby received as General Counsel's Exhibit 14L, and the response is received as General Counsel's Exhibit 14M.



## 2. Allegations

The various complaints issued in this proceeding, cumulated in the Second Consolidated Amended Complaint (herein referred to as the complaint), allege that Respondent violated Section 8(b)(1)(B) of the Act by restraining and coercing employer-members of AMPTP, and NBC, CBS, ABC, and QM in the selection of their representatives for collective bargaining and the adjustment of grievances by threatening to discipline and by disciplining certain persons and classes of persons employed by the aforesaid employers, such persons and classes of persons being, it is alleged, members of Respondent, and supervisors within the meaning of the Act for their respective employers and representatives or potential and likely representatives for their employers for the purposes of collective bargaining or the adjustment of grievances within the meaning of the Act.

Respondent's answer to the complaint, while admitting certain allegations, denies the alleged unfair labor practices.

Upon the entire record in this case, from observation of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Charging Parties,<sup>3</sup> I make the following:

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<sup>3</sup>After the decision of the Supreme Court in *Florida Power & Light Co. v. I.B.E.W. Local 641, et al.*, .... U.S. ...., 86 LRRM 2689, the parties were invited to file briefs, no later than August 9, 1974, with respect to the impact of that decision upon this case and did so. I have also issued a separate order correcting some inaccuracies in the transcript.

## Findings and Conclusions

### I. Jurisdiction

AMPTP is an association located at Los Angeles admitting to membership firms engaged in the production and distribution of motion picture and television films, and existing, in part, for the purpose of negotiating, executing, and administering collective-bargaining agreements on behalf of its employer-members with the bargaining representatives of their employees, including the Respondent. AMPTP members collectively annually sell and ship from their studios in California directly to points outside that state motion picture films and other products valued in excess of \$50,000.

ABC, CBS, and NBC each have offices in various locations throughout the United States including California, and each derives gross revenues in excess of \$100,000 from sales to customers located outside California, and each annually purchases goods valued in excess of \$50,000 directly from suppliers located outside California.

QM, a corporation with its principal place of business in Burbank, California, engaged in the production and distribution of motion picture and television films, annually sells such films valued in excess of \$50,000 directly to customers located outside California.

Respondent's answer admits, and it is found that the Association, and its members through the Association, CBS, NBC, ABC, and QM are employers engaged in commerce within the meaning of the Act.

Respondent's answer admits, and it is found that Respondent is now and at all times material has been a labor organization within the meaning of the Act.

## II. Preliminary Statement of Facts and Principal Issues

Respondent has for some time represented persons engaged in writing functions employed by members of AMPTP, the Networks, and certain independent producers such as QM. As a result of prior bargaining, Respondent was a party to collective-bargaining agreements with AMPTP, for its members, with the Networks, and with QM due to expire in 1973. The AMPTP agreements were terminated effective March 4, by notice from the Respondent pursuant to the terms of the agreements. On or about that same date, Respondent engaged in a strike against the AMPTP and its employer members which continued until June 24, during which time Respondent picketed some of those employers at various times. Beginning on or about March 29 and continuing until July 12, Respondent engaged in a strike against NBC, CBS, and ABC, and maintained picket lines at the premises of each of them. Beginning on or about March 4, and continuing until March 17, Respondent engaged in a strike against and maintained a picket line at the premises of QM.

In February and thereafter, Respondent adopted and distributed to all its members some 31 strike rules (later reduced to 30, as discussed hereinafter), in anticipation of the strike which ensued. In essence these rules (hereinafter considered in some detail) forbade members of Respondent to do any work of any sort for employers on strike, or to cross picket lines to go upon the premises of such employers without specific permission of Respondent. Respondent took other action, and caused certain publicity to issue



designed to impress upon its members the consequences of violating these Rules.

At the times material to this proceeding, Respondent's membership included a substantial number of persons engaged in performing functions other than writing for their employers in the industry. Because of their ability to perform in more than one capacity, such as producing, directing, or writing, these persons are referred to as "hyphenates". It would appear that many of these, if not most, have not engaged in creative writing for years. Respondent asserts, however, that even when their principal function is other than writing, the nature of the work is such that they must and do engage in some writing. The hyphenate's principal work function (other than writing) will sometimes be referred to herein as his (or the) "primary function."

General Counsel contends that these hyphenates occupy supervisory positions within the meaning of the Act, and are representatives, or potential and likely representatives, for their respective employees for the purposes of collective bargaining or the adjustment of grievances.

The record indicates that Respondent was particularly concerned that its hyphenate members should not cross picket lines or go to work during the strike. Members who were in a withdrawn status prior to the strike were reactivated. Most of the hyphenates appear to have held only associate membership in Respondent at the time. Those hyphenates questioned indicated their understanding that, as associate members, they had no right to vote on the adoption of the Respondent's strike rules, and did not do so. With one exception,



the hyphenates also testified to the same effect with respect to the vote authorizing Respondent to strike. Herbert Wright, an associate producer, testified that at the strike vote meeting he was given a card permitting him to vote on authorization of the strike, but was not given an opportunity to vote on the strike rules.

Respondent's Constitution and By-Laws in evidence (G. C. Exh. 12a) are confusing on the issue. Those in effect until December 1972 provide in Article IV, Section 6, paragraph 1, that associate members shall not have the right to vote, while Article XIV, Section 8 (last paragraph) states certain restricted circumstances in which associate members may vote on strikes. In the latter part of the booklet are proposed changes in the Constitution and By-Laws. Assuming that these were in effect at times material to this case, Article IV, Section 7(b) provides that associate members under certain conditions (different from those noted above) might vote on strikes. However, it is not shown that any hyphenate involved herein satisfied these latter conditions. Counsel for Respondent, during the disciplinary hearing concerning hyphenate-member Coles Trapnell, asserted that Associate Members could not vote on the strike rules as such.

At least one of these hyphenate-members attempted, prior to the strike, to resign from membership in Respondent. In accordance with the provisions of the Constitution and By Laws, Respondent rejected the attempted resignation, "in view of current contract negotiations and the importance to the Guild of maintaining effective communication with its membership," advising that the member must maintain his membership at least during the period of negotiations and probably

for 6 months thereafter. This became known to other hyphenates prior to the strike. It was stipulated by the parties that at all times material this refusal to permit any member to resign from membership during the pendency of collective-bargaining negotiations, and for 6 months thereafter, was the policy of Respondent.

From approximately April 6 through about November 8, Respondent served charges for violation of strike rules and notice of disciplinary hearing upon at least 31 hyphenate-members. At least 15 such hearings have been held and penalties imposed on no less than 10 of those charged. It is indicated that other trials were contemplated at the time of the receipt of the filing of the last stipulation of facts by the parties and that appeals were pending from penalties imposed. Other action appears to have stayed pending disposition of this proceeding.

The major issues to be resolved are the following:

1. The alleged status of the various hyphenates as supervisors and representatives for collective bargaining and the adjustment of grievances. This was considerably litigated. However, in its brief, Respondent, as hereinafter noted, appears to concede that hyphenates performing many functions in dispute (other than that of story editor) are supervisors within the meaning of the Act, and may adjust grievances of employees other than writers represented by Respondent.

2. Whether various actions of alleged restraint and coercion of hyphenates by Respondent designed to compel the hyphenates to cease work for the struck employers, and Respondent's actions in charging, trying, and penalizing such members for going to work during

the strike, violated Section 8(b)(1)(B) of the Act. Also whether Respondent's refusal to allow such hyphenates to resign from membership in these circumstances violated the Act.

3. Whether certain issues in this matter should be deferred to arbitration under the parties' collective-bargaining contracts.<sup>4</sup>

### III. The Supervisory Issues

The General Counsel contends that persons performing the following functions are supervisors within the meaning of the Act, and are representatives or potential or likely representatives of their employers for the purposes of collective bargaining or the adjustment of grievances:

1. *Executive Producer, Producer, and Associate Producer.* The producer has the primary responsibility for the production of films for motion pictures or for television. This responsibility begins with the idea or concept for the film or the series; includes involvement in the budget for the film; the employment of a writer or writers who develop and write the scripts under the supervision of the producer or others as-

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<sup>4</sup>In its answer to the complaint Respondent asserted as three "Separate Special" defenses the claims that 1) by the terms and provisions of the various bargaining agreements, the employers had waived the right to designate Respondent's members as representatives for collective bargaining or the adjustment of grievances during the strike; 2) by the terms and provisions of the various bargaining agreements, the employers had agreed Respondent's members, including supervisors, might refuse to work during the strike "and be subject to Guild discipline for crossing picket lines or working for struck employers . . ."; and 3) that the two issues set forth should be deferred to arbitration. In its original brief at p. 19, Respondent has withdrawn its first two special defenses. The third is considered hereinafter.

sociated with the producer; the employment of a director and cast for the film, as well as other employees necessary to make the film (cameraman, etc.); the selection of sets, locations; the performance of executive functions during the filming; and the performance of executive functions in the post-production stages, after filming.

The producer has substantial responsibility and authority in adjusting grievances between directors and craft employees, directors and actors and actresses, between two or more actors or actresses, and in other similar situations. Producers also have responsibility and authority to adjust grievances involving writers, as in the case of disputes between writers and story editors. In one instance in which a dispute arose as to whether a commitment had been made to a freelance writer, the producer involved decided that no commitment had been made. The testimony shows that if the producer had decided that a commitment had been made, that would have been binding and resolved the dispute. Producers also make the initial determination in situations in which there may be dispute over the assignment of screen credits to writers, although this is a complex matter, subject to extensive review. In situations in which the film is being shot on a distant location, the producer may be involved in negotiating or agreeing to short-term agreements with local unions where the services of local craft members are required, and possibly adjusting, or attempting to adjust, local jurisdictional conflicts.

In general, an executive producer supervises one or more producers (this seems to be particularly the case in the television industry where an executive pro-



ducer may have responsibility for several series or projects at the same time, each with its own producer). The associate producer is an assistant to the producer. Without distinguishing among them in detail, it is clear on this record that persons occupying these positions in the motion picture or television industries have the authority to hire, terminate, and responsibly direct other employees, and to adjust employee grievances, or to effectively recommend such action, and are thus supervisors within the meaning of Section 2(11) of the Act. Respondent does not contest this finding or conclusion (brief, pp. 7-8), except, as noted, in respect to the producer's role in adjusting grievances of writers. (Brief, pp. 4, 7-8). As found above, however, I find that producers, executive producers and associate producers do or potentially may adjust grievances involving writers.

Respondent contends that persons performing the functions considered here, as well as those occupying positions described hereinafter, as a normal part of their work, perform writing functions coming within the jurisdiction of Respondent. This contention will be considered hereinafter in a separate section of this decision devoted to this issue.<sup>5</sup>

The record indicates approximately 80 hyphenate-members of Respondent in the position of Executive

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<sup>5</sup>Respondent adduced considerable testimony concerning certain hyphenates who are legally employed by their own wholly-owned corporations, which corporations furnish the hyphenates' services to employers involved in this proceeding. This is referred to in the record as a "loan out" agreement. The record is convincing and I find that such "loaned-out" employees occupy the same positions as more conventionally employed persons doing the same work and are treated the same by the employers here involved. It is noted that Respondent makes no point of this in its brief.

Producer, Producer, or Associate Producer employed by the charging parties in this matter (including major members of AMPTP). Among them, the following were charged by Respondent with violation of its strike rules: Philip Barry, Hugh Benson, Cy Chermack, Robert Cinader, Barry Crane, Jon Epstein, Andrew J. Fenady, Stephen Heilpern, Ron Honthaner, Leonard Katzman, David Levinson, Roger Lewis, James McAdams, John T. Mantley, Thomas L. Miller, Martin Ransohoff, William Roberts, Albert Ruddy, Herman S. Saunders, David Victor and Herbert Wright.<sup>6</sup> Of these, Chermack, Cinader, Crane, Epstein, Levinson, Saunders, Victor, Ruddy, Benson, and Roberts were brought before trial panels set up by Respondent. Some of these were disciplined by Respondent as noted hereinafter.

2. *Directors.* Persons in this category are in direct charge of the principal photography of the film. They hire or effectively recommend the employment of crew and actors, effectively direct such employees, and may discharge or effectively recommend the discharge of employees. They have authority to and do adjust grievances of such employees. It is found that persons performing the functions of director in the television and motion picture industries are supervisors and adjust grievances of employees within the meaning of the Act.

The record indicates approximately 15 hyphenate members of Respondent in this position employed by the charging parties (without duplicating those listed

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<sup>6</sup>There are two or three additional producers noted on G. C. Exh. 3 as having received charges who were not listed in the parties' post-hearing stipulation and for whom copies of the charges were not submitted.

as producer-directors, or the like). Of these Respondent charged the following with violation of its strike rules: Philip Kaufman, Michael Crichton and Sam Peckinpah, Crichton was brought before a trial panel and was disciplined.

3. *Story editors, story consultants, script consultants, executive story editors, executive story consultants.* Although there may be some differences among these classifications, or in the requirements of the various employers for these positions, these job functions may be considered together for our purposes under the title of "story editor." The story editor is of principal assistance to the producer in the highly important functions of dealing with scripts and writers. The story editor may be, and frequently is, concerned with reading and acquiring scripts, interviewing writers and recommending them for hire (or otherwise), directing and supervising writers in the development of ideas and the preparation of scripts, and in recommending that writers not be retained. On a television series, the story editor may participate with the producer in the initial determination of any dispute over screen credits. He also may serve as a buffer between management and the writer, as in ameliorating a writer's distress over material that has been rewritten. Thus one executive story editor testified that because he is the first person in the studio that the writer meets, and due to the story editor's close association with the writer, "if he [the writer] has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out." During the disciplinary trial of one in this group, Coles Trapnell, it was indicated that he supervised story analysts employed by the employer.



In all of these functions it is found the story editor is expected to and does use individual judgment, initiative and responsibility. On the basis of the entire record, it is found that those persons in the television and motion picture industries performing the functions of story editor, story consultant, script consultant, executive story editors, and executive story consultants are supervisors and adjust grievances of employees within the meaning of the Act.<sup>7</sup>

Of approximately 15 hyphenate-members of Respondent in this position employed by the charging party in this matter. Respondent charged Robert Blees, Frank Paris, and Coles Trapnell with violation of Respondent's strike rules and brought them before a disciplinary trial board of Respondent.<sup>8</sup>

4. *Other classifications.* The General Counsel argues that hyphenates in other classifications, who received Respondent's strike rules, or were threatened with charges or were charged with violation of those rules, or were tried at disciplinary hearings for violation of those rules, are also supervisors and representatives, or potential representatives, of their employers for collective bargaining or the adjustment of grievances.

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<sup>7</sup>In *Metro-Goldwyn-Mayer Studios, et al.*, 7 NLRB 662, at 696, the Board at the request of Screen Writers Guild, Inc., found story editors in the motion picture industry to be executives and supervisors and excluded them from a unit of writers sought by that union.

<sup>8</sup>It is noted that Respondent made no effort during these disciplinary hearings to show that these men did any writing or performed any functions during the strike which were not normal to the primary function of the classification. During the Trapnell hearing, indeed, Respondent's Counsel stated, typical of Respondent's position in these hearings, that "[i]t is immaterial [to Respondent's charges against Trapnell] what type of services were being rendered, whether they were writing services or other services."



The record indicates that these persons do occupy executive or management positions. However, my analysis of the record shows that all of the persons revealed by the record who were both charged and tried by Respondent for violation of the strike rules are contained in the classification previously considered, except Jerome Bredouw, and the charges against Bredouw were dismissed after trial, and, so far as this record shows, no penalty was assessed against him. In the circumstances it would serve no useful purpose to consider such other classifications in which those hyphenates are employed.

#### IV. The Writing Function

Respondent argues, in essence, *inter alia*, that all of the above categories normally and regularly engage in writing within the jurisdiction of the Respondent, and that it should be inferred, therefore, that those hyphenate members of Respondent who went to work during the strike must have engaged in such writing. This is largely disputed by witnesses for the General Counsel and defendants at the disciplinary hearings who testified that they do not in the performance of their primary function for their employers normally or regularly perform writing coming within Respondent's collective-bargaining agreements and specifically did not do so during the strike. This requires, at the outset, some consideration of the functions of writers represented by the Respondent under the various agreements.

Referring to the 1970 Theatrical and Television Basic Agreement between Respondent and the employer members of AMPTP, it is noted that the parties recog-

nized that members of the Guild could be employed in capacities other than as writers. It is provided in Article 14, paragraph A, of that Agreement, referring to "writers in non-writing capacities," that where such individual is employed "to render services in a capacity or capacities other than as a writer," those "services shall not be subject to this Basic Agreement."<sup>9</sup> It is further provided that where such an individual is also employed as a writer (as defined in the agreement), such services shall be performed under a separate agreement providing for compensation as set forth in the agreement.

Article 14, paragraph B of that Agreement also provides, in pertinent part, that "A person employed as a writer for a series whose duties include for that series interviewing other writers, suggesting story ideas or script changes to other writers, or recommending approval of material submitted by writers, shall be subject to this Basic Agreement (excluding Executives, Executive Producers, and Producers; and also excluding persons who are employed as bona fide Associate Producers, who do not perform services as a writer for the series and where the above duties of such persons are incidental to their primary duties)."

The term "writer" as defined in Article 1, paragraph B.1.a., and paragraph C.1.a. of that Agreement, in-

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<sup>9</sup>Although the heading of Article 14 would indicate that it applies only to the "television" side of the industry, it is noted that Article 1B1. of the Agreement, which defines the term "writing" in the "theatrical" side of the industry, also adopts the language of Article 14.

Article 1A 11. of the 1970 Networks basic agreement also states that the limited exceptions the agreement "shall not nor is it intended to cover the services of Producers, Directors, Story Supervisors, composers, non-writing capacity. . . ."

cludes, in pertinent part, a person "who performs services . . . in writing or preparing . . . literary material or making revisions, modifications, or changes in such literary material . . ., provided, however that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), . . ., or other employees, shall not be subject to this Basic Agreement and such sources shall not constitute such person a writer hereunder: (a) Cutting for time, (b) Bridging material necessitated by cutting for time, (c) Changes in technical or stage directions, (d) Assignment of lines to other existing characters occasioned by cast changes, (e) Changes necessary to obtain continuity acceptance or legal clearance, (f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography, (g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.), (h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay." These latter eight exceptions were referred to during the hearing, and will be referred to herein, as "A to H functions."

There is no dispute that a person writing an original story, story outline, treatment, or finished script for television or motion pictures is performing writing functions within the meaning of the contract between the Respondent and the various employers. Some persons who have written such scripts may thereafter, if they have the capacities, be engaged to produce those scripts or direct the photoplay made from such a script. In such cases, such director, or the producer would have



a separate agreement with the employer covering such sources, in accordance with Respondent's collective-bargaining agreement. Some producers and directors who have the capacity to write may have separate agreements with their employers covering possible writing assignments even in situations in which the employer does not actually require them to write.

An issue arises, however, as to what writing is done on scripts after the writer has delivered a finished script which has been accepted by the employer, and who does such writing. Again there seems no question that numerous changes are made in some scripts prior to principal photography, during principal photography, and thereafter before release of the film. Many of these changes, perhaps most, involve A to H functions, and may be made by producers or directors or story editors whether or not they are members of the Respondent. It is indicated that prior to the strike, other changes of a more substantial nature might be made in the script when the producer or the director desired. Such changes would be made by persons qualified under the applicable contract between Respondent and the employer.

Respondent argues, however, that even when management executives and supervisors perform functions which have been excluded from the bargaining agreements, such as A through H functions, they are nevertheless performing writing functions within the jurisdiction of Respondent. The argument misses the point. It is not necessary to decide here what constitutes writing, or even what different segments of the industry might consider writing as such. The important point is that when these executives and supervisors perform



those functions excluded from the Respondent's bargaining agreements they thereby perform functions which the parties have acknowledged do not constitute work reserved to Respondent's non-hyphenate members under the agreements, but rather are accepted as a normal part of the duties and responsibilities of the executives and supervisors (as hereinabove discussed) employed by the employers involved.<sup>10</sup>

## V. Strike Related Activities

### 1. *Respondent's strike rules*

In February, the Respondent promulgated and distributed to all its members, including hyphenates occupying positions discussed above, a list of 31 RULES FOR CONDUCT OF MEMBERS DURING A STRIKE. These received considerable publicity in the local papers and the trade press. Fifteen of these strike rules relate, in whole or in part, to prohibitions against writing for struck employers, or the submission of literary material to such employers (Rules 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 18, 23, 25). Various rules with which we are not particularly concerned here deal with such matters as the use of fictitious names (Rule 15), acts of agents (Rules 17, 20), individual negotiations by members (Rule 21), penalties provided by Respondent's Constitution and By-Laws (Rule 29), and enforcement of the rules by committees

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<sup>10</sup>In some of the disciplinary trial transcripts, it is noted that Respondent's counsel argued vigorously that functions excluded from Respondent's agreements, such as A through H, were excluded because the economic strength of the employers in bargaining. However, this is the classic way in which management and supervisory rights and functions are differentiated from rank and file functions under a bargaining agreement.

(Rule 31). The remaining rules in pertinent part, are as follows:

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance of the premises of a struck producer.
13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film . . . should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.
19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.
22. A member is chargeable with knowledge of all strike rules and regulations, . . . circularized through the mail to the membership and of any strike information made known . . . through . . . trade papers, newspapers, radio broadcasts or telecasts. . . .

24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts to writing.
26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.
27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectible in a suit at law.
28. The Guild shall have the authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than \$100 per day for each day of such refusal to perform.
30. No member shall work with any individual, including a writer-executive who has been sus-



pended from Guild membership by reason of his violation of strike rules, or has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person.

By means of meetings and publicity, and through personal contact, memos, telegrams and letters, Respondent emphasized and confirmed that these rules would be enforced against the hyphenate-members.<sup>11</sup> The hyphenate-members were particularly vulnerable to pressure under rule 30 because in their primary work as producers, directors, story editors, and executives, they would be unable to effectively function in the future if writer-members of Respondent refused to work for or with them. In telephone conversations with certain of the hyphenates, agents of Respondent emphasized this consequence should the hyphenate cross the picket line to work. The wife of one hyphenate-member was assured that Respondent would end her husband's rather distinguished career by not permitting writers to work with him if he crossed the picket line. On April 14 during the strike, Respondent issued a press release, which received wide publicity, concerning the filing of charges against "five writer-producers",

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<sup>11</sup>One such communication was a telephone conversation between Herbert Wright, a producer, and Alan Griffiths, Assistant Executive Director of Respondent. During the hearing, Respondent asserted a variance between Wright's testimony and his affidavit held by the General Counsel and further requested that I accept Wright's affidavit as substantive evidence under the rule of evidence in California. See *Starlite Mfg. Co.* 172 NLRB 68, 71-3. The issue is not mentioned in Respondent's briefs. I have carefully considered Wright's testimony and his affidavit, and I credit Wright's testimony as given at the hearing. Treating Wright's affidavit as substantive evidence would not affect the findings made herein.



Jon Epstein, Cy Chermak, Herman Saunders, David Victor and Jack Webb, for "crossing a picket line for the purpose of going to work for a struck company." The release stated that in addition to other possible penalties, if they were convicted, these men would, "according to Guild officials", "appear on a 'Roll of Dishonor,'" and "be listed in Guild publications 'in perpetuity so that Guild members for years to come will never forget' ". The Guild official assertedly "characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.' "

After the issuance of the original consolidated complaint in this matter Respondent, on April 30, rescinded Rule 30, and by letter to all its members, dated May 7, advised:

Old Rule 30 provided that no member shall work with any individual suspended or disciplined because of violating strike rules. The Guild's position has been, and remains, that it will press disciplinary action as vigorously as the law and good union principles permit, against every member guilty of violating strike rules. Because the old rule could be misconstrued to mean that the Guild was maintaining an improper sanction, a matter of anathema to this Guild, the Board of Directors rescinded old Rule 30 at its regular monthly meeting of April 30, 1973. This action was taken voluntarily, in the belief that ample disciplinary measures remain available to trial committees, including penalties of fines, expulsion from membership and other sanctions, and with the conviction that even in the pursuit of strike discipline, members of the Guild do not wish to be a part of an action which carries the odious implications of a "black list."

2. *Pressures on hyphenates by employers and others*

As previously noted, the hyphenates here involved in most cases had personal services agreements with their employers to perform in their primary capacities as directors, producers, story editors, and the like. It would also appear that many were members of labor organizations representing them in those capacities, some of which organizations, if not all, apparently held bargaining contracts with the employers.

Prior to the strike, various employers parties to bargaining contracts with Respondent sent communications to hyphenates they employed insisting that they come in to work to perform their regular functions other than writing in the event of a strike. The following letter, in pertinent part, from Twentieth Century-Fox Film Corporation is typical:

We intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

\* \* \*

We expect you to fulfill your contractual obligations to us as a supervisor<sup>12</sup> and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and which is legally sustained.

Prior to sending these letters, the members of the AMPTP and the networks had determined that they would not require the hyphenate-members of Respondent to write during the strike.

In addition to these letters, it appears that the hyphenates were placed under certain pressure to perform by the unions holding contracts with the employers covering the principal function for which the hyphenate was employed. Thus, according to a counsel for the Directors Guild, at the time of the Respondent's strike, the Director's Guild held a no-strike contract with employers of hyphenates working as directors, assistant directors, and unit production managers, and felt obligated to inform its members that if they refused to render services covered by the bargaining agreement and the hyphenate's personal service contracts (other

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<sup>12</sup>At this point some employers inserted the specific function, e.g., Director, Producer, etc., for which the individual was engaged by that employer.



than writing), they would be subject to suits for large damages and other penalties.<sup>13</sup>

### 3. *Enforcement of Respondent's strike rules*

As has been previously noted, Respondent, by issuance of the strike rules, by a meeting with the hyphenate members prior to the strike, by communications and publicity, emphasized that it would take disciplinary action against the hyphenates who went to work during the strike in any capacity. The hyphenates held meetings of their own to determine the proper course to follow.

Some hyphenates went to work. The record shows that a number of the hyphenates (I would assume most of them, if not all) advised their employers that they would do no writing, but would only perform services under their personal services contracts as producers, directors, etc., as the case might be. There is evidence that Respondent was informed of this.<sup>14</sup>

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<sup>13</sup>This statement was made during the disciplinary trial of John Michael Crichton. There are indications of similar action by the Producers Guild, and legal action taken against that union by Respondent.

<sup>14</sup>Frank R. Pierson, a producer, advised Respondent that he had a personal services contract to produce a film which he intended to perform during the strike, that the script was finished and no more writing services would be performed. Pierson offered to provide and did later provide a copy of the final shooting script so that Respondent "could compare it with the shooting continuity . . . to see whether . . . anyone had indeed done any writing." Herbert Wright, after informing Respondent that he would work only as an associate producer and was not employed to write, nor would he write, was advised that he would be in violation of the strike rules if he went to work. Crichton, who performed as a director during the strike, also informed Respondent that he had ceased writing on the project and testified that Respondent could confirm this. During his disciplinary hearing it appears that Crichton's employer did provide means for confirming this.

(This footnote is continued on next page)



During the various disciplinary trials of the hyphenates who worked during the strike, Respondent, as noted above, for the most part professed little or no interest in what kind of work was done during the strike, and presented no proof that the work done by the hyphenates was covered by the recently terminated contracts held by Respondent.<sup>15</sup> The evidence is that the hyphenates who worked during the strike performed the normal functions of the primary positions for which they were employed prior to the strike, e.g., director, producer, story editor, etc., or in some other executive position, and exercised the authority appertaining to such positions.<sup>16</sup>

From April 6 through November 8, 1973, Respondent notified more than 30 hyphenate members that they had been charged with violation of Respondent's strike rules and set hearings on the charges. The only rules alleged to have been violated were rules 1, 12, 13 and 28. Most hyphenates were alleged to have violated rules 1, 12 and 13; some only rules 12 and 13;

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Paris, an executive story editor informed Respondent that he would work in an executive capacity. Trapnell, also an executive story editor, did work as an executive during the strike.

<sup>15</sup>It was stipulated at the hearing in this matter that counsel for the Respondent who participated in the disciplinary hearings instituted by Respondent would testify that he took the position at such hearings that the hyphenates charged "are subject to discipline for crossing Respondent's picket line without regard to whether they cross the picket line for the purpose of performing bargaining [unit] services for a struck employer or not. And that the charges will properly lie for crossing the picket line even if the person charged has given assurances to a representative of [Respondent] that he is not and will not perform any [writing] services for the struck employer."

<sup>16</sup>E.g., Robert A. Cinader, during his disciplinary hearing, referred to the adjustment of a dispute between a cameraman and an actor and others; Producer Albert S. Ruddy testified to hiring a lead actor; others asserted their general function and authority as supervisors and in the adjustment of grievances.

some rules 1, 12, 13 and 28; some rules 12, 13 and 28, and one only rule 12. Typical of the language of the charges is the following:

\* \* \*

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders and Sections 1, 12, 13, and 28 of the Rules for the Conduct of Members during a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which is attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at CBS Studio Center, during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Columbia Broadcasting System, Inc., a company against whom the Guild was at such times on strike; and (3) refusing to perform picket duties during the strike after having been requested to do so by representatives of the Guild.<sup>17</sup>

\* \* \*

The record contains the transcript of disciplinary trials of 15 of those charged. The charges against

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<sup>17</sup>Testimony by Respondent's officials in the disciplinary hearings makes clear that passes would not have been granted to hyphenates to go in to work as producers, directors, or the like, even if requested. It is also noted that some hyphenates did agree to perform picket duty at some places notwithstanding they were crossing other picket lines, which, understandably, tended to create some confusion.

at least one of these was dismissed. From June 25 through September 28, 1973, Respondent's Board of Directors issued the following disciplinary penalties against 10 hyphenate members, in addition to costs of the hearing: Two were expelled from membership and fined \$50,000 each; one was expelled from membership and fined \$10,000; one was suspended from membership for 2 years and fined \$10,000; one was suspended for 2 years and fined \$7,500; one was suspended for 3 years and fined \$5,000; one was expelled from membership and fined \$2,000; one was expelled and fined \$100; and one was suspended for 2 years and fined \$100.<sup>18</sup> These penalties received wide publicity in the local press and trade papers. The appeals of nine of these men has been voted upon by Respondent's membership at a special meeting and the penalties were drastically reduced. Apparently all remaining actions with respect to discipline of hyphenate-members for working during the strike are now being held in abeyance pending resolution of these cases.

#### VI. The Requests for Arbitration

During the course of the strike, by letter dated April 28, 1973, Respondent made certain requests for arbitration upon AMPTP and the Networks, with carbon copy to the Board's Regional Director. The following letter to AMPTP sets forth the basis for the requests:

Gentlemen:

Reference is made to the Writers Guild of America 1970 Theatrical and Television Film Basic Agree-

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<sup>18</sup>The 10 hyphenates penalized for violation of Respondent's strike rules were Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John Mantley, Herman Saunders,



ment ("Agreement"). A dispute exists between the Guild on the one hand and the Association its member companies on the other hand concerning the interpretation of the terms of the Agreement and their application and effect with respect to the effect of the current strike by the Guild on the employment contracts of its members and the claimed right of yourself and the companies to complain of the Guild's enforcement of its strike rules with respect to all its members, including those employed in other capacities. The Guild submits the following questions to grievance and arbitration:

1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and

2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threatened or imposed by the Guild on any of its members.

This will constitute a notice of grievance in accordance with the provisions of the Agreement

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David Victor, Robert Cinader and Barry Crane. No disciplinary hearing transcript for Crane appears in the record.



with you and your member companies that the Guild submits the dispute to grievance and arbitration pursuant to the provisions of Articles 10, 11, and 12 of the Agreement. In that connection, the Guild is willing to waive the grievance step and proceed directly into arbitration.

By letters dated May 14, and May 18, AMPTP and the Networks replied denying Respondent's grievance and request for arbitration. The pertinent part of the AMPTP letter, in substance similar to the Network's reply, is as follows:

This is in response to your letter of April 28, 1973, in which you claimed that there is a dispute between the Guild and the Association and its member companies concerning the interpretation and application of the terms of the . . . ("Agreement") in connection with the current strike of the Guild.

\* \* \*

In view of the legal nature of the questions raised by you, and by virtue of the fact that your letter was obviously an effort to make a record for purposes of the imminent National Labor Relations Board proceeding in which a complaint has been issued against the Guild, your letter was carefully reviewed by our attorneys.

Your request to arbitrate the foregoing issues is hereby denied for the following reasons:

1. The Grievance and Arbitration procedure which you seek to invoke is no longer in effect between the Guild and the members of the Association as to any matters arising subsequent to March

5, 1973. By your letter of February 2, 1973, you terminated the collective bargaining agreement, containing these provisions effective March 4, 1973. Additionally, after we had reached an impasse by letter of March 27, 1973, we advised you that effective April 2, 1973, our member companies intended to effectuate certain changes in working conditions including that they would no longer apply the Grievance Arbitration provisions of the Agreement, except as to matters arising before March 5, 1973. You were given an opportunity to bargain about this intended change but failed to do so and on April 2, 1973, said change was implemented.

2. There is no colorable claim that could be made for the applicability of the Grievance and Arbitration Procedure of the Agreement to the two issues raised by you even if such Grievance and Arbitration Procedure were still available. The effect of Article 7 upon the status of individual employment cannot possibly be subject to grievance or arbitration, inasmuch as the status of such agreements is expressly excluded from grievance and arbitration. There is not a word in the entire Agreement which would support the position taken in the second issue which you have posed. You have heretofore advanced this theory unsuccessfully to the General Counsel of the National Labor Relations Board. You will no doubt urge it again in the impending hearing on the complaint issued by the General Counsel.

\* \* \*

In Respondent's answer to the complaint, it raised three affirmative defenses based upon the above. In the first two "speech defenses," Respondent asserted, almost *in haec verba*, the two positions set forth above, which would have required the Board to interpret the agreement, or find the defenses irrelevant. In its original brief, as previously noted, Respondent has withdrawn these two defenses. In Respondent's "Third Separate Special Defense," Respondent recites the fact that it has requested the Association and the Networks to arbitrate the two issues set forth, and concludes: "In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof."

#### Analysis and Conclusions

Under Section 8(b)(1)(B) of the Act it is an unfair labor practice for a labor organization "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The Board, in a series of cases, some of which are discussed in *Florida Power & Light Co. v. IBEW Local 641*, *supra*, has previously held that action by a union to restrain or coerce the performance of duties by supervisors who were or might be selected by their employers for the purposes of collective bargaining or adjustment of grievances violates that section of the statute. Thus it has been held that union threats to discipline supervisors for allegedly violating bargaining agreements or asserted practices or policies of the union, charges

brought by a union against such supervisors, trials held, and penalties levied against them for contravening the purposes and directives of the union were prohibited by this section of the law, on the ground that such action subverted the loyalties the employer was entitled to expect from the supervisor in the performance of his functions and deprived the employer of the supervisor whom the employer had selected—or potentially might select—to represent the employer for purposes of collective bargaining or adjustment of grievances. In the two cases considered by the Supreme Court in *Florida Power & Light*, the Board had held that union discipline of union-member supervisors who had crossed union picket lines and performed rank and file struck work during the strikes involved there thus violated Section 8(b)(1)(B). The Court of Appeals for the District of Columbia, which considered these cases, disagreed. As stated by the Supreme Court (slip opinion p. 7, footnotes omitted):

In a 5-4 decision, the court [of appeals] held that “[S]ection 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank and file struck work,” and accordingly refused to enforce the Board’s Orders. Section 8(b)(1)(B) the court held, “was intended to proscribe only union efforts to discipline supervisors for their actions in representing management in collective bargaining and the adjustment of grievances. It was the court’s view that when a supervisor forsakes his supervisory role to do work normally performed by nonsupervisory employees, he no longer acts as a managerial representative and hence no longer



merits any immunity from discipline” 487 F.2d at 1157. We granted certiorari, 415 U.S. ...., to consider an important and novel question of labor law.

The Supreme Court itself affirmed the Court of Appeals by a vote of 5-4, holding that the legislative history of the pertinent amendments to the Act made it clear that in enacting Section 8(b)(1)(B), “Congress was exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment” (slip op. p. 13), and not with the general problem of the supervisor’s conflict of loyalty as between his employer and his union. As the Supreme Court said (slip op. p. 14, emphasis in original):

Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment. The conclusion is thus inescapable that a union’s discipline of one of its members who is a supervisory employee can constitute a violation of §8(b)(1)(B) only when that discipline may adversely affect the supervisor’s conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.

The Court then noted that in the cases before it (*Florida Power & Light* and *Illinois Bell*) “it is certain that these supervisors were not engaged in collective

bargaining or grievance adjustment, or in any activities related thereto, when they crossed union picket lines during an economic strike to engage in rank and file struck work." (Slip op. p. 15)

The Court concluded, "for these reasons, we hold that the Respondent unions did not violate Section 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank and file struck work." (Slip op. p. 23)

In coming to this conclusion, the Court also noted that the result was not inequitable, inasmuch as it derived from the options exercised 1) by the employers in recognizing the unions as representatives of these supervisors under the union contracts, and 2) by the supervisors in becoming and remaining members of the unions for their own benefit. As to the supervisors, the Court stated, in pertinent part (Slip op. pp. 21-22, citations omitted):

There can be no denying that the supervisors involved in the present cases found themselves in something of a dilemma, and were pulled by conflicting loyalties. But inherent in the option afforded the employer by Congress, must be the recognition that supervisors permitted by their employers to maintain union membership will necessarily incur obligations to the union. . . . And, while both the employer and the union may have conflicting but nonetheless legitimate expectations of loyalty from supervisor-members during a strike, the fact that the supervisor will in some measure be the beneficiary of any advantages secured by the union through the strike makes it inherently inequitable that he be allowed to function as

a strikebreaker without incurring union sanctions. The supervisor-member is of course not bound to retain his union membership absent a union security clause, and if, for whatever reason, he chooses to resign from the union, thereby relinquishing his union benefits, he could no longer be disciplined by the union for working during a strike. . . .

In these cases, the supervisors' dilemma has been somewhat exaggerated . . . in *Illinois Bell*, the company did not command its supervisors to work during the strike and expressly left the decision to each individual. Those who chose not to work were not penalized, and some were in fact promoted by their employer after the strike had ended. Those who did work during the strike but performed only their regular duties were not disciplined by the union. In *Florida Power*, the record does not disclose whether the supervisors crossed the picket lines at the company's request or not, but in any event, the union did not discipline those who did so only to perform their normal supervisory functions.

Similarly, in *N.L.R.B. v. San Francisco Typographical Union No. 21, etc. (California Newspapers, Inc.)* 485 F.2d 1347 (also relied upon by Respondent), where the Board had found the union there involved had violated Section 8(b)(1)(B) by disciplining supervisor-members for crossing the union's picket lines, the Court held that "the Board's broad interpretation of Section 8(b)(1)(B) . . . is an unjustified extension of the limited language of Section 8(b)(1)(B). Had the members elected to resign from the union, the

power of the Union over them would have ended. [Citation omitted] But here the members remained in the Union, and therefore continued to be subject to their obligations as members." The Court also noted that although those disciplined were supervisors, "the Union did not punish them for exercising any management duty." (486 F.2d at 1349-50)

Compare *Scofield v. N.L.R.B.*, 394 U.S. 423, where, in the course of holding that Section 8(b)(1)(A) did not proscribe a union's enforcement of productivity ceilings through the discipline of members, the Supreme Court stated (at p. 430), "... Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members *who are free to leave the union and escape the rule.*" (Emphasis added.)

In this case we are concerned with certain supervisory, executive, and managerial personnel (referred to as hyphenates) principally employed to perform functions *not* covered by Respondent's collective-bargaining agreements (which agreements provide for the conditions of employment and the recompense of writers who furnish certain writing services to the television and theatrical industries), but who are nevertheless members of Respondent and who on occasion may do work properly falling within the terms of those bargaining agreements. The case involves the attempts of Respondent to coerce and restrain those hyphenates from going to work in any capacity during the course of a strike by Respondent against the hyphenates' employers over the terms for renewal of Respondent's bargaining agreements. Respondent promulgated and



distributed strike rules to all its members forbidding the members to go to work in any capacity during the strike. These received wide publicity. These were further enforced by personal and written communications, and at Respondent's meetings with the hyphenates, to impress upon them that the strike rules applied to the hyphenates and would be enforced against them.<sup>19</sup> Some hyphenates who allegedly violated one or more of the strike rules were charged, tried before trial boards of Respondent, and when convicted were disciplined.

During this same period, Respondent also had and enforced a policy, well known to the hyphenates, under which Respondent refused to permit such hyphenate-members to resign from membership prior to or during the strike.

At the same time, many of the hyphenates, probably most, were obligated to perform their primary managerial and supervisory functions under personal service contracts with their employers. Prior to the strike the hyphenates were informed by their employers that they would be expected to fulfill their contracts and come in to perform their normal work during the strike. In some cases, perhaps most, these primary functions were also covered by collective-bargaining agreements with other labor organizations requiring that the hyphenates not engage in strikes. At least one or two such unions directed their hyphenate mem-

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<sup>19</sup>Originally one of the rules, later officially rescinded, provided for the perpetual ostracism of any hyphenate working during the strike, which would clearly have wrecked the further careers of such persons. The impact of the rule itself, as well as the indication of the implacable attitude which prompted it, were clearly coercive of the hyphenates' freedom of action.

bers to perform during the strike in accordance with that union's contract.

It is clear, as has been found, that the normal performance of the hyphenates' primary functions involves the adjustment of employee grievances, and, in the case of producers on distant location, to engage in collective bargaining with labor organizations. Those hyphenates charged by Respondent with violation of its strike rules, who testified in this hearing or before Respondent's trial boards denied performing any writing function during the strike other than that which had been commonly agreed in the past to be permissible for hyphenates performing supervisory and managerial functions. Indeed, the employers had determined in advance not to require writing of the hyphenates who worked during the strike. Evidence was offered to Respondent by certain hyphenates to substantiate the fact that those hyphenates, though working during the strike, nevertheless did no writing. Respondent, indeed, points to no instance of any hyphenate doing any "rank and file" work during the strike. In its original brief, Respondent stated its position as follows, in pertinent part (Orig. brief pp. 11-12, emphasis in original):

. . . we believe that the record here supports an inference that hyphenate Guild members who crossed picket lines necessarily performed services of a non-supervisory character which bring them within [the Court of Appeals' decisions in *Illinois Bell* and *California Newspapers*].

. . . Virtually all of the hyphenate writers called as witnesses by General Counsel conceded that they performed only (a) through (h) writing

functions which, upon their view, were not strike defeating because such services were outside the coverage of the Guild contract. . . .

. . . Rather, it is our contention that such writing falls within the prohibitions of [Respondent's strike rules] and that the scope of such rules was legally permissible. . . .

The permissible scope of the strike rules, as to hyphenates, can only be judged fairly in connection with the production activities of the struck employers which the Guild had the right to frustrate . . . the most critical service of the producers is the finding and participation in the hiring of writers . . . while this is a statutory supervisional function, nevertheless, in a strike situation the performance of this non-writing function requires the producer to be the active recruiter of strike-breaking writers. The average foreman union member in an industrial plant is not in a strike situation, normally called upon to act as the *principal recruiter of strike breakers*.

In order to perform under his producer contract, the hyphenate Guild member necessarily must place himself directly in direct opposition to the strike strategy of the Guild and, at the same time, be free from the normal discipline imposed upon strike-breakers. The matter of disloyalty arises from the continued performance of the hiring function itself.<sup>20</sup>

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<sup>20</sup>In its supplementary brief, Respondents states that while it considers the "record as a whole" supports a finding that "rank and file" work was done, its position is that *Florida Power* makes the finding "irrelevant" (Supp. brief p. 5)



These arguments, however, do not meet the issue. The fact is that according to the record, such writing as the hyphenates did during the strike was limited to that commonly accepted in the industry as part of the managerial and supervisory function and thus was not rank and file work. I so find. Indeed, although a number of Respondent's strike rules forbade writing for struck employers, none of the hyphenates was charged with violating those rules. It was stipulated that Respondent's counsel, during the disciplinary hearings, was not concerned with what work the hyphenates did when working during the strike.

In its supplementary brief, Respondent argues that it would be difficult to determine in these cases what the supervisors did after they went to work during a strike, for the supervisors and employers would not likely cooperate. However, in the one instance in which Respondent's trial panel is shown to have requested evidence, it was supplied by the employer. In another instance the hyphenate supplied evidence voluntarily, without request. In one of the disciplinary trials there was testimony by a union member that when he returned to work after the strike, he found no writing that had been done by a hyphenate (with whom the member was closely associated) who had worked during the strike, the union member stating that he was satisfied that some writing had been done by an executive who was not a member of Respondent. From this it seems clear that if hyphenates working during the strike had performed rank and file work, Respondent had means for discovering it.

Though the evidence is sparse, the record indicates that during the strike, where the situation arose, the



hyphenates dealt with grievances of employees who worked during the strike, or, in any event, were available to deal with such matters in their normal capacities when and if such grievances arose.

Further, it has long been established that an employer may legally employ replacements for striking employees during a strike (in union terminology "strikebreakers") see *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345. Thus action by managerial or supervisory employees in recruiting employees during a strike would manifestly fall within the normal functions of such persons. There is no evidence of which I am aware that any hyphenate performing as a producer during the strike (as argued by Respondent) recruited or hired a writer during the strike—for the most part the evidence is that such producers were involved with scripts already written and ready for production—but if any such writer was recruited or hired by a producer, this was clearly a proper managerial or supervisory function.

Nor is it material, in the circumstances of this case, that by going in to work at managerial and supervisory functions during the strike, hyphenate-members frustrated Respondent's strike strategy, or provided the employers with more economic clout than they otherwise might have possessed. Respondent cannot deny the hyphenates the right to resign from membership, and thus be free of the obligations of membership, while at the same time argue that because the hyphenates continued to be members they cannot be "free from the normal discipline imposed upon strike breakers." It was well known among the hyphenates that Respondent would not permit them to resign prior to or during

the strike. At least one hyphenate's attempt to resign from membership in Respondent during this period was rejected. It is, of course, not known how many hyphenates would have resigned if this had been an option available to them. It is inferred that at least those who went back to work during the strike would have done so, and possibly others. The rights of the hyphenates and their employers are not reduced because the exercise of those rights might make Respondent's position more difficult.

The results of the strike would be of only problematical benefit to many of the hyphenates involved. Respondent's contracts did not cover the hyphenates' managerial and supervisory functions (as was the situation in *Florida Power*) and would have benefited the hyphenates only if they engaged in writing covered by the bargaining agreements. There was testimony from a number of hyphenates that they had done no substantial writing of such character for a considerable number of years. There is little indication that the hyphenates received other substantial benefits from their membership in Respondent, except that derived from being part of the writing community which provided significant contacts with writer-members of Respondent, a sense of pride in belonging to the organization, and, perhaps most important, providing the hyphenate with a wider range of capabilities and thus enhancing his usefulness to his employer.

It has been previously found that those hyphenates occupying the positions of Executive Producers, Producers, Associate Producers, Directors, Story Editors, Story Consultants, Script Consultants, Executive Story Editors and Executive Story Consultants, as considered herein-

above, are supervisors within the meaning of Section 2(11) of the Act selected by their employers to adjust grievances, and, in the case of the producer function, to negotiate agreements with labor organizations with the meaning of Section 8(b)(1)(B) of the Act. On the basis of the above discussion and the record as a whole it is found that by issuing strike rules designed to compel such hyphenates from going to work during the strike called by Respondent, and by meetings, personal contacts, telegrams, and phone calls designed to restrain and coerce such hyphenates from going to work during the strike, Respondent restrained and coerced the hyphenates from performing managerial and supervisory services for their employers during the strike, including the adjustment of employee grievances and participation in collective bargaining, and thus coerced and restrained those employers in the selection of representatives for collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B); that those hyphenates involved in this matter who worked during the strike performed managerial and supervisory functions including the adjustment of grievances on collective bargaining as required, and did not perform rank and file work; and that by charging, trying, and disciplining such hyphenates who worked during the strike in such circumstances, Respondent further coerced and restrained the employers in the selection of their representatives for the purposes of collective bargaining within the meaning of Section 8(b)(1)(B) of the Act. It is therefore found that Respondent, by the activities set forth above, violated Section 8(b)(1)(B) of the Act.



In coming to this conclusion, I have given careful consideration to Respondent's contention that the Supreme Court in *Florida Power*, not only disapproved of the Board's finding that a violation of Section 8(b)(1)(B) had occurred in those cases, but, by completely overturning the Board's rationale in those cases, in effect held that coercion, restraint and discipline of supervisor-members by a labor organization for working during a strike cannot be held by the Board to violate the Act. I disagree. It is clear that Respondent's action in this case violated the plain meaning of the statute without the necessity of resort to statutory exegesis. To illustrate: A person performing the function of a director acts in a managerial or supervisory capacity, which normally includes the adjustment of grievances of actors, actresses, craft employees and others. One occupying the position of a producer normally has a similar capacity and similar duties with respect to employee grievances. In addition, if the film is being shot on distant location the producer has authority to negotiate on the spot agreements with local unions. Thus when Respondent prevented or sought to prevent, such hyphenate members from going to work in their managerial and supervisory capacities as producers and directors during the strike, Respondent obviously coerced and restrained their employers in the selection of those specific producers and directors for the purpose of collective bargaining and the adjustment of grievances of employees working during the strike within the plain meaning of the statute. Similarly, those persons employed as story editors or in like classifications perform executive functions normally, and appear to have done so during the strike, in which the record



indicates they were engaged as supervisors and actual or potential representatives of their employers for the adjustment of grievances.<sup>21</sup> Respondent, by coercing or restraining persons in these classifications from going in to do their normal work thereby actually coerced and restrained their employers from selecting those persons as the employers' representatives for the adjustment of grievances and for collective bargaining during the strike.

The General Counsel also contends that Respondent's rule restricting the right of hyphenate-members to resign from membership should also be found to violate the Act. This raises what seems to me a quite important and difficult issue, one which may well have different consequences for supervisors as distinguished from rank and file employees.<sup>22</sup> I do not, however, have to

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<sup>21</sup>As previously noted, two executive story editors, Paris and Trapnell, appear to have worked as executives during the strike. According to the disciplinary transcript, Trapnell is a supervisor over story analysts who apparently did not strike.

<sup>22</sup>As to the rank and file employees, since they are compelled by law to accept labor organizations chosen by the majority in the unit, and may be compelled to join or assist such unions even if violently opposed to them, and to comply with their rules even if personally obnoxious to the employees involved, it may well be argued that such employees should be afforded reasonable opportunity at proper times to resign their membership in such organizations and escape the imposition of such rules. Some commentators who have considered the subject indicate that this is a likely direction of the law. See *Restrictions on the Right to Resign: Can a Member's Freedom to Escape the Union Rule Be Overcome by Union Boilerplate?*, 42 Geo. Wash. L. Rev. 397 (1974); 26 Vand. L. Rev. 837 (1973); *Union Disciplinary Fines and the Right to Resign*, 30 Wash. & Lee L. Rev. 664 (1973); 5 St. Mary's L. J. 176 (1973); 40 Geo. Wash. L. Rev. 330 (1971). There may be, as the Court of Appeals for the First Circuit has indicated, "... a limit of reasonableness beyond which a union may not be permitted to go in holding captive its members." See *N.L.R.B. v. Int'l Union, U.A.W.*, 297 F.2d 272, 276 (1961).

determine these matters in this case. The General Counsel did not allege this matter as a violation of the Act in his complaint, nor put it properly in issue during the hearing. In the circumstances, I do not pass upon the issue.

Lastly, I have carefully considered Respondent's contention that certain issues should be referred to arbitration and the complaint in this proceeding be dismissed. I have determined that this contention should be denied for the following reasons:

1. The parties have not agreed that the issues presented by the complaint in this matter should be determined by arbitration. The bargaining agreements held by Respondent which expired on or about March 4, or shortly thereafter, contain no restriction upon Respondent's issuance of strike rules, or upon its right to restrain members to comply with its rules, or upon Respondent's right to strike when it did. Respondent, indeed, does not claim that there were any contractual provisions which forbade or approved of such actions. It does claim that there was a contractual provision which would have protected the hyphenates if they desired to respect Respondent's picket line.<sup>23</sup> The employers, on their part, refer to provisions of the agreements in support of their contentions that the agreements

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<sup>23</sup>Section 2 of Article 7 in certain expired agreements provided, in pertinent part, that "If, after the expiration or other termination of the effective term of this Basic Agreement, the [Respondent] shall call a strike against any Company, then each respective current employment contract of writer members of [Respondent] (hereinafter . . . referred to as 'members') with such Company shall be deemed automatically suspended, both as to service and compensation, where such strike is in effect, and each such member of [Respondent] shall incur no liability for breach of his respective employment contract by respecting such strike call . . ."

do not cover or apply to the functions performed by the hyphenates, and further that these provisions of Article 7 are specifically exempted from arbitration. There is no need to consider the merits of these contentions. We are not here concerned with whether there was agreement that these hyphenate-members of Respondent could respect Respondent's picket lines or its strike call with impunity from action by the employers, but we are concerned with whether the Respondent may legally restrain and coerce the hyphenate-members from going to work, at the insistence of their employers, to perform functions not covered by Respondent's contracts, and whether Respondent may discipline such members for going to work in such circumstances. No contractual basis appears and Respondent points to none which would authorize an arbitrator to pass on such issues.<sup>24</sup>

Assuming, without deciding, that the employers had agreed to absolve Respondent's hyphenate-members of all liability for breach of their personal services contracts (which, as noted, the employers vigorously dispute), it does not follow, as Respondent argues, that the employers thereby agreed not to ask, direct, or insist that such members come in to work, or agreed that the employers would not select such members as their representatives for adjustment of grievances

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<sup>24</sup>Cf. *Houston Mailers Union No. 36, etc.* (*Houston Chronicle*), 199 NLRB No. 36, relied upon by Respondent, in which the Board held that where the employer and the union there involved had specifically agreed in their bargaining agreement that the union "shall not discipline the foreman," and where the only issue before the Board concerned discipline of a foreman by the union, the Board deferred to the arbitration process in accordance with the bargaining agreement of the parties.

or collective bargaining, or that the employers agreed that Respondent could restrain or coerce the members not to work, or, if the members did come in to work at the employers' insistence, that Respondent could discipline the members for doing so.

2. There is substantial doubt that Respondent's actions which are the basis for the complaint in this matter are subject to arbitration in any event. Almost all of Respondent's conduct with which we are here concerned, including the charges against the hyphenates, the disciplinary trials and the penalties imposed, occurred after the termination of the bargaining agreements and at a time when neither Respondent nor the employers had consented to arbitration of their actions.

3. The legal issues involved in this proceeding are matters of importance to the administration of the Act, as shown by the Supreme Court's recent decision in *Florida Power*. The application of the principles laid down in that decision and the development of the law in this area should be made by the Board in a unified and consistent fashion, and not delegated to the diverse opinions of various arbitrators who have neither been selected to administer the Act nor sworn to do so. This matter is highly complex and involves many factual and legal issues having little or no relation to contractual questions. The parties have spent much time litigating these issues and at considerable expense. It would seem to me an act of administrative abnegation of duty to tell the parties to start over again before another tribunal when the proceeding has already been tried before the agency appointed by Congress to hear and decide the issues.



### Conclusions of Law

1. The employer members of the Association of Motion Picture and Television Producers, Inc., American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., and QM Productions (herein collectively referred to as "the employers") are, and each of them is, an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

2. Writers Guild of America, West, Inc. ("the Respondent") is a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing the employers of hyphenate-members of the Respondent, and each of the employers, in selection of their representatives for the purpose of collective bargaining or the adjustment of grievances, as found hereinabove, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Sections 2(6) and (7) of the Act.

### The Remedy

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(b)(1)(B) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The record is convincing that Respondent, well aware of the primary supervisory, management, and executive functions of its hyphenate-members, drafted its strike

rules and enforced them with the intent of compelling those hyphenate-members from going to work during the strike, without regard to the capacity in which they performed or the work done. In particular, by threatening to blacklist in perpetuity such hyphenates who worked during the strike, the rules threatened to drive those hyphenates out of the industry. Though the mandatory effect of the rule was rescinded (see Resp. Exh. 11), there are other indications that Respondent's actions encourage a voluntary blacklist. Thus, in its letter to members explaining their options on appeals from penalties imposed upon certain hyphenates who worked, Respondent stated, *inter alia*, "There is obviously a stigma attached to expulsion which might cause individual members of the [Respondent] to refrain from working for such a person. The Guild itself cannot order its members to refrain from working with an individual merely because he was expelled." (Resp. Exh. 12) In at least one instance, in the disciplinary transcript relating to Robert Blees, a writer-member of Respondent expressed his intent not to work with Blees because the latter had worked during the strike, though the writer-member acknowledged that he was under no compulsion from Respondent to take that position. I fully realize that this member as well as others might have adopted this position even if Respondent had not suggested it by its rule and other communications and publicity. However, the fact is that Respondent did suggest it, and it is now impossible to disentangle the consequences flowing from its actions. I shall recommend a broad order in order to restore the *status quo* and remedy the various effects of Respondent's actions found to have violated the Act.

The General Counsel and the Charging Parties have requested a number of particular remedies, some of which I find appropriate in the circumstances and have included in the following order. It is requested that the fines, suspensions, and expulsions from membership of the hyphenates be rescinded and revoked. In the ordinary case I would be loath to hold that a union may not suspend or expel a member who worked during a legal strike. However, here, where the hyphenates have been forced to undergo the stigma of suspension or expulsion by Respondent's deliberate action in refusing them a free choice to withdraw in a normal manner prior to working during the strike, and where Respondent has further suggested that members not work with hyphenates who were expelled, I am convinced that the effects of Respondent's actions can best be remedied by restoration of the *status quo ante*. It is also noted that in the four cases in which appeals were perfected, Respondent's membership rejected the penalties of suspension or expulsion. Inasmuch as the record is incomplete as to the status of the other hyphenates charged, I shall recommend the normal remedial order as to all, without distinction between those whose suspension or expulsion has already been revoked and those for whom it has not.

It is also requested that Respondent be ordered to mail a copy of the notice to each of its members and to publish the notice in the local trade papers, "Hollywood Reporter" and "Daily Variety", as well as in local papers of general circulation. The record shows that Respondent was careful to mail its strike rules, directions, orders and instructions to all its members in order to give those actions wide and per-



sonal service; and further that the matter of compulsion of the hyphenate-members to abide by Respondent's rules and the trials of those members and the penalties imposed upon them was given wide publicity in the trade papers and local press through press releases and other information supplied by Respondent and its officers. The request that equal publicity be given to the Board's notice is clearly justified. However, I believe that this can be accomplished through requiring Respondent to publish the Board's notice in the two trade papers for one week (six consecutive issues). I do not think that it is necessary that the notice be published by Respondent in the local press, or that the publication in the trade papers be for three consecutive weeks as requested. I further do not agree, as has been requested, that there is any necessity that the notice be read at Respondent's membership meetings, in addition to the normal posting of the notice, and the mailing and publication just considered.

There is a further request that Respondent be ordered to reimburse those hyphenates who were brought to trial for violating Respondent's strike rules for the reasonable expenses of defending their conduct in their trials. A persuasive argument can be made on the point. There is no question but that Respondent deliberately used the difficult position of the hyphenates in a power play against the employers. However, the hyphenates are not entirely without responsibility in the result; for whatever their reasons, they had maintained membership in Respondent until the very last minute. There is also no evidence that Respondent did not sincerely believe that it had the right to do as it did. While sincerity does not excuse violation of the



law, it has weight in considering an unusual remedy such as that requested. I do not believe that this remedy is justified in these circumstances.

Upon the foregoing findings of fact, conclusions of law and the entire record, I issue the following recommended:<sup>25</sup>

### ORDER

Writers Guild of America, West, Inc., the Respondent herein, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing any employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances:

(1) by issuing rules, orders, directions or instructions in any form to any supervisor, executive or other management personnel whose functions involve or may involve collective bargaining or the adjustment of grievances not to perform supervisory, managerial or executive functions for such employer, or

(2) by threatening any such employer representative with fines, suspension or expulsion from membership, blacklisting, ostracism, or any other penalty or reprisal for performing supervisory, managerial or executive functions for such employer, or

(3) by citing or charging any such employer representative with violation of any such rule, order, direction

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<sup>25</sup>In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

or instruction, or by summoning any such employer representative before any committee, board, panel, or tribunal to be tried for, or by trying any such employer representative for violation of any such rule, order, direction or instruction forbidding such representative from performing supervisory, executive, or managerial functions, or

(4) by fining or otherwise disciplining such employer representatives for performing supervisory, executive, or managerial functions, or

(5) by enforcing in any other manner any such rule, order, direction, or instruction.

(b) In any like or related manner restraining or coercing any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Revoke, rescind, and expunge from Respondent's records, the fines, suspensions, or expulsions from membership, or other disciplinary action, or penalty imposed upon Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, Barry Crane, or upon any other employer representative as described in paragraph 1.(a)(1) above, for working during the strike beginning on or about March 4, 1973, as a supervisor, executive, or in a managerial capacity.

(b) Reimburse Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mant-

ley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described in paragraph 2(a) above, for the fines levied against them, with interest thereon at 6 percent per annum.

(c) Advise Hugh Benson, Robert Blee, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described above, in writing, that any fines levied against them, and any action suspending or expelling them from membership in the Respondent, or any other penalty imposed upon them for working during the said strike, has been revoked and rescinded, and that such fines and suspensions or expulsions, or other penalties have been expunged from Respondent's records.

(d) Post at its office and meeting halls copies of the notice attached, marked "Appendix."<sup>26</sup> Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

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<sup>26</sup>In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE

(e) Mail a signed copy of the attached notice marked "Appendix" to all Respondent's members to whom Respondent's strike rules dated February 20, 1973, were mailed.

(f) Publish the attached notice marked "Appendix" for one week (6 consecutive issues) in "Hollywood Reporter" and "Daily Variety," immediately after posting said notice.

(g) Notify the Regional Director for Region 31, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.

Dated at Washington, D.C., September 18, 1974.

/s/ Sidney J. Barban  
Sidney J. Barban  
Administrative Law Judge



NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances

(a) by ordering, directing, or instructing any such representative not to perform supervisory, executive or managerial functions for an employer, or

(b) by threatening any such representative with fines, suspension or expulsion from membership, blacklisting, or any other penalty for performing supervisory, executive or managerial functions, or

(c) by charging, trying, or penalizing any such representative for working as a supervisor, executive, or in a managerial position.

WE WILL NOT in any like or related manner restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind and revoke, and expunge from our records any fine, suspension or expulsion from membership or any other penalties to the extent previously imposed on the following persons or on any other representative of an employer for the purpose of collective bargaining or the adjustment of grievances who worked as a supervisor, executive or in a managerial

position during the strike which began on or about March 4, 1973:

Hugh Bensen

Robert Blee

Cy Chermack

Robert A. Cinader

Barry Crane

Jon Epstein

David Levinson

John T. Mantley

Herman S. Saunders

David Victor

WE WILL reimburse the persons named and described above for any fines imposed upon them for working during the strike which began on or about March 4, 1973, with interest thereon at 6 percent per annum.

WRITERS GUILD OF AMERICA, WEST,  
INC.

(Labor Organization)

Dated..... By.....  
(Representative) (Title)

United States of America, Before the National Labor Relations Board, Division of Judges, Washington, D.C.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of American West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355.

ORDER CORRECTING RECORD

Upon consideration of the entire record in this matter, it is ordered that the following corrections be made in the transcript of testimony in this proceeding:

| Page | Line              | Correction  |
|------|-------------------|---|
| 365  | 22                | Change "closed" to "close"  |
| 367  | 2                 | Change "supposed" to "disposed"   |
| 554  | 18                | Take out "CROSS"  |
| 674  | 16                | Change "threat" to "thread"   |
| 734  | at end of line 4  | Insert "(The document above referred to marked General Counsel's Exhibit no. 3 was received into evidence)" |
| 753  | 1                 | Insert "dais" before "upon"   |
| 773  | 20                | Change "defect" to "effect"   |
| 939  | at end of line 10 | Insert "(The document above referred to marked Association's Exhibit no. 7 was received into evidence)"     |
| 949  | 20                | Change "seek" to "receive"  |
| 958  | 3                 | Change "in its" to "unit"   |
| 958  | 8                 | Change "ranking" to "writing"   |
| 977  | 19                | Insert "offering it" before "only"  |
| 979  | at end of line 5  | Insert "(The document above referred to marked Respondent's exhibit no. 5 received into evidence)"          |
| 1002 | 24                | Change "wake" to "weight"   |
| 1005 | 19                | Change "tree (?) production" to "preproduction"   |
| 1120 | 3                 | Change "ranking" to "writing"   |
| 1120 | 13                | Change "question" to "series"   |

/s/ Sidney J. Barban  
Sidney J. Barban  
Administrative Law Judge



## **APPENDIX 8.**

### **Respondent's Brief in Support of Exceptions to Administrative Law Judge's Decision.**

United States of America, Before the National Labor Relations Board, Division of Administrative Law Judges, Washington, D.C.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc., and QM Productions. Case No. 31-CB-1355.

### **PRELIMINARY STATEMENT**

Respondent attaches hereto and adopts by reference copies of its BRIEF TO ADMINISTRATIVE LAW JUDGE (Exhibit "A") and the STATEMENT OF POSITION OF RESPONDENT ON THE EFFECT OF *FLORIDA POWER & LIGHT COMPANY v. NLRB*, 86 LRRM 2689 OF THE UNITED STATES SUPREME COURT, (Exhibit "B").

The original hearing of these cases was concluded on June 13, 1963. The record was reopened and updated by stipulation of additional evidence and was finally closed with briefs of all parties filed in March, 1974. While the case was under submission, the Supreme Court, on June 24, 1974, handed down its decision in the *Florida Power* case, *supra*. The ALJ invited all parties to file briefs by August 9, 1974, with respect to the impact of that decision. (Footnote 3, ALJ Decision). The *Florida Power Statement*, adopted here, by reference, as Exhibit "B", was filed by Respondent and continues to represent its reasons for contending that *Florida* controls these cases and requires dismissal.

No purpose would be served by a rebriefing of the law of that case as applied to the record here.

Respondent's ALJ Brief fully sets forth the evidence upon which Respondent relies to bring the case within *Florida Power* and for this reason, it also is made a part of this Brief as Exhibit "B".

In light of the law as it now stands, Respondent herewith withdraws its third affirmative defense (ALJ Decision, page 7, lines 1-2; Footnote 4; page 31, line 16 through page 33, line 30 which, in the alternative sought deferral to arbitration under the *Collyer* doctrine.)

### ISSUES TO BE RESOLVED

Amended to reflect the above matters and the scope of exceptions filed by Respondent, the ALJ's statement of the major issues is accepted by Respondent. (ALJ Decision, page 6, lines 30-43). As so amended it reads as follows:

1. The alleged status of the various hyphenates as supervisors and representatives for collective bargaining and the adjustment of grievances. This was considerably litigated. However, in its brief, Respondent, as hereinafter noted, concedes that hyphenates performing many functions in dispute (other than that of story editor) are supervisors within the meaning of the Act, and may adjust grievances of employees other than writers represented by Respondent.

2. Whether various actions of alleged restraint and coercion of hyphenates by Respondent designed to compel the hyphenates to cease work for the struck employers, and Respondent's actions in charging, trying, and penalizing such members for going to work during the strike, violated Section 8(b)(1)(B) of the Act.

### ARGUMENT

The case of *International Union of Operating Engineers Local No. 9*, (Shelton Pipeline and Construction, Inc.), 213 NLRB No. 93, 87 LRRM 1247, decided by four members of the Board on September 27, 1974, supports each contention Respondent has made with respect to the proper interpretation and application of *Florida Power* to the facts at issue here.

In that case, the Union had fined Collins, one of two company job superintendents, for "crossing Trades Council's picket line and working at the site." The Union's Constitution provided that members were subject to fines and expulsion "for working contrary to a declared strike." A Union official testified that a violation of Union rules occurred if a member "crosses a legal picket line." As to Collins management authority the Board found:

"Collins was one of the two superintendents at Shelton; he reported directly to Shelton's president; he was Shelton's representative for the purpose of resolving disputes arising under the collective bargaining agreement with Respondent; he was the person designated by Shelton to receive employee complaints; he represented Shelton at a hearing before the Iowa Employment Security Commission in a matter involving unemployment compensation for a former employee; and Collins met with Roderick, one of Respondent's business representatives, and adjusted a paycheck problem involving an employee. We agree that Collins was a representative selected by Shelton 'for the purpose of . . . the adjustment of grievances.'" 87 LRRM 1248.

After crossing the picket line Collins:

"... operated a piece of equipment. *He had previously operated such equipment during periods when there was a shortage of manpower.*" 87 LRRM 1247. (Emphasis supplied.)

The Board interpreted *Florida Power* in these words:

"The Court held that the union's discipline of supervisor-members can violate Section 8(b)(1)



(B) only when it adversely may affect their conduct in performing the duties of, and acting in the capacity of, grievance adjusters or collective bargainers on behalf of the employer. Also, the Court noted in the decision that Congress addressed the problem of a supervisor's loyalty to an employer but not through Section 8(b)(1)(B), but instead through Sections 2(3), 2(11), and 14(a), which permit the employer to refuse to hire union members as supervisors, to discharge supervisors because of union activities or membership, and to refuse to engage in collective bargaining with them. In the instant case, Superintendent Collins was not engaged in performing the duties of, and acting in the capacity of, grievance adjuster or collective bargainer on behalf of the Employer when he crossed the picket line and performed struck work." 87 LRRM 1247.

Only by hairsplitting distinctions can Collins' actions and situation be treated differently from the hyphenates involved here. The touchstone of the decision was *not* performance of rank-and-file work behind the picket line. It was, as Respondent argues in Exhibit "B" at page 3, whether he was disciplined because of his performance of work as a management representative under Section 8(b)(1)(B).

The work which Collins did was rank-and-file work which the Union permitted him to do "when there was a shortage of manpower." It is difficult to distinguish this work from the A to H writing which *might* be done by hyphenates if occasion required it. In any event, the Board's rationale was not in any way based upon his performance of such non-

supervisory work nor did the Union fine Collins because of the performance of such work behind the picket line.

As in this case, the Union's rules condemned crossing picket lines to perform any service for the struck employer. The Board appears to accept Respondent's position that the *Oakland Mailers* type of discipline falls "within the outer limits of this [the Court's] test" of the scope of Section 8(b)(1)(B) in Union discipline of members who are supervisors. (Exhibit "B", page 3).

For the foregoing reasons, Respondent requests dismissal of the Complaint.

Dated: November 27, 1974.

Respectfully submitted,

/s/ Charles K. Hackler

CHARLES K. HACKLER

1625 West Olympic Boulevard

Suite 805

Los Angeles, California 90015

## APPENDIX 9.

### Decision and Order.

United States of America, Before the National Labor Relations Board.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc.<sup>1</sup> and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc.<sup>2</sup> and QM Productions. Cases 31-CB-1203-2, and 31-CB-1316, Cases 31-CB-1223, and 31-CB-1313, and Case 31-CB-1355.

On September 18, 1974, Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions<sup>3</sup> and a supporting brief, and Charging Parties Networks and the Association filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herewith, and to adopt his recommended Order.

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<sup>1</sup>Hereinafter referred to as the Association.

<sup>2</sup>Hereinafter referred to as the Networks.

<sup>3</sup>In its brief to the Board, Respondent withdrew its contention that certain issues should be deferred to arbitration under *Collyer Insulated Wire*, 192 NLRB 837 (1971). Accordingly, that issue is not before the Board for resolution.

1. The Administrative Law Judge found violations of Section 8(b)(1)(B) only with respect to the "hyphenates"<sup>4</sup> in the producer, director, and story editor classifications because the record showed that, except for Jerome Bredouw, all of the persons who were both charged and tried by the Union occupied those positions. With respect to Jerome Bredouw, he found that the charges against Bredouw were dismissed after trial, and that no penalty was assessed against him. The Administrative Law Judge therefore concluded that it was unnecessary to consider alleged violations as to those hyphenates in other classifications,<sup>5</sup> and he therefore did not resolve these additional allegations in the complaint. The Association and the Networks, two of the Charging Parties herein, except to this omission for reasons we deem meritorious.

There is no question that, although only some of the hyphenates were brought to trial and actually

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<sup>4</sup>"Hyphenates" is a term applied to persons who are writers but possess the ability to perform in more than one capacity, such as producing, directing, or editing for their employers in the industry. We affirm the Administrative Law Judge's findings that hyphenates who are also producers, directors, and story editors are supervisors within the meaning of Sec. 2(11) of the Act.

<sup>5</sup>Included in these classifications are vice presidents for program production, vice presidents for production, vice presidents for program development, general programming executives, managers of film programs, and executives. Although the Administrative Law Judge made no finding on the supervisory status of persons occupying these positions, we find it necessary to do so. The record clearly reflects that persons in these classifications engage in hiring and are representatives, or potential representatives, of their employers in the adjustment of grievances. Accordingly, we conclude that persons occupying the above positions are supervisors and representatives of their employers within the meaning of Secs. 2(11) and 8(b)(1)(B) of the Act.



fined or disciplined for crossing the picket line, all of the hyphenates named in the complaint were threatened with similar discipline and adverse action if they crossed the picket line to go to work. There is also no question that when Respondent threatened the hyphenates, Respondent was determined to enforce its threats without regard to the fact that the Charging Parties uniformly followed a policy during the strike not to require hyphenates to perform any unit or struck work. Furthermore, if it had any doubt at all, Respondent could easily have ascertained whether any struck work was in fact performed by comparing dated scripts to the final film production. As we find that Section 8(b)(1)(B) proscribes the disciplinary action here taken against some hyphenates<sup>6</sup> (but only threatened against others), it would seem to follow, and we further find, that the proscription also encompasses the threat to take the prohibited disciplinary action.<sup>7</sup> Therefore sustain the complaint's alleged violations of Section 8(b)(1)(B) of the Act, *in toto*.

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<sup>6</sup>*Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 NLRB No. 149 (1975); *New York Typographical Union No. 6, International Typographical Union, AFL-CIO (Daily Racing Form, a Subsidiary of Triangle Publishers, Inc.)*, 216 NLRB No. 147 (1975).

<sup>7</sup>*Local 423, Laborers' International Union of North America, AFL-CIO (Mansfield Flooring Co., Inc.)*, 195 NLRB 241 (1972); *International Union of Operating Engineers, Local 406, AFL-CIO (New Orleans Chapter, Associated General Contractors of America, Inc.)*, 189 NLRB 255, 265 (1971); *United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Association, Local No. 220 (Jones and Jones, Inc.)*, 177 NLRB 632, 653 (1969).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Writers Guild of America, West, Inc., Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

Dated, Washington, D.C. May 13, 1975.

Howard Jenkins, Jr.,  
Member

John A. Penello,  
Member

NATIONAL LABOR RELATIONS  
BOARD

(SEAL)

MEMBER FANNING, dissenting:

For the reasons stated in my dissenting opinion in *Triangle Publications, Inc.*, 216 NLRB No. 147, I would dismiss the complaint. I wish to point out, once again, that the Supreme Court has, in *Florida Power & Light Co.*,<sup>8</sup> indicated that Section 8(b)(1)(B) was designed for the sole and limited purposes of preventing labor organizations from forcing employers into multiemployer bargaining negotiations and from dictating to employers whom they should select to represent them during grievance adjustment procedures and/or collective-bargaining sessions. Our prior "evolutionary" approach<sup>9</sup> to this section of the Act having thus been rejected by the Supreme Court, it is obvious that the very narrow thrust accorded the section in its early years must be reconstituted as its current thrust. Whatever the wisdom of Respondent's course of action herein, the plain fact is that its actions are not, in my view, proscribed by the section upon which the General Counsel relies. I thus dissent.

Dated, Washington, D.C. May 13, 1975.

John H. Fanning,  
Member

NATIONAL LABOR RELATIONS  
BOARD

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<sup>8</sup>*Florida Power & Light Co. v. International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 (1974).

<sup>9</sup>For a discussion of the history of Section 8(b)(1)(B) see *id.* at 798-805.

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances:

- (a) by issuing rules, orders, directions, or instructions in any form to any such employer representative not to perform supervisory, executive, or managerial functions for an employer, or
- (b) by threatening any such employer representative with fines, suspension, or expulsion from membership, blacklisting, ostracism, or any other penalty or reprisal for performing supervisory, executive, or managerial functions, or
- (c) by charging or trying any such employer representative for performing supervisory, executive, or managerial functions, or
- (d) by fining or otherwise disciplining any such representative for performing supervisory, executive, or managerial functions, or
- (e) by enforcing in any other manner any such rule, order, direction, or instruction.

WE WILL NOT in any like or related manner restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind and revoke, and expunge from our records, any fine, suspension, or expulsion from



membership or any other penalties to the extent previously imposed on the following persons, or on any other representative of an employer for the purpose of collective bargaining or the adjustment of grievances, who worked as a supervisor, executive, or in a managerial position during the strike which began on or about March 4, 1973, and advise such persons of this action:

|                   |                    |
|-------------------|--------------------|
| Hugh Benson       | Jon Epstein        |
| Robert Blees      | David Levinson     |
| Cy Chermack       | John T. Mantley    |
| Robert A. Cinader | Herman S. Saunders |
| Barry Crane       | David Victor       |

WE WILL reimburse the persons named and described above for any fines imposed upon them for working during the strike which began on or about March 4, 1973, with interest thereon at 6 percent per annum.

WRITERS GUILD OF AMERICA,  
WEST, INC.  
(Labor Organization)

Dated..... By.....  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 12100 Federal Building, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213—824-7351.

**Decision.**

United States of America, Before the National Labor Relations Board, Division of Judges, Washington, D.C.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355.

*Philip R. LeVine, Esq.*, for the  
General Counsel.

*Charles K. Hackler, Esq.*, and *Gerald Goldman, Esq.* (*Levy, VanBourg & Hackler*), and *John A. Mendonsa, Esq.*,  
Los Angeles, Calif., for the  
Respondent.

*Harry J. Keaton, Esq.* (*Mitchell, Silberberg & Knupp*; *Andrew B. Kaplan, Esq.*, on the brief);  
*David G. Miller, Esq.* (*Loeb and Loeb*), Los Angeles, Calif.; for  
the Charging Party AMPTP.

*Richard N. Fisher, Esq. (O'Melveny & Myers; Raymond P. Hermann, Esq., on the brief), Los Angeles, Calif. for the Charging Party Networks.*

## DECISION

### Statement of the Case

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Los Angeles, California, on several dates from May 21 until November 26, 1973.<sup>1</sup> The hearing was closed by an order dated January 25, 1974.

#### 1. Procedure

Upon a charge filed in Case No. 31-CB-1203-2, on March 8, against Writers Guild of America, West, Inc. (herein "Respondent") by Association of Motion Picture and Television Producers, Inc. (herein "AMPTP"), and a charge filed in Case No. 31-CB-1223, on April 4, against Respondent by American Broadcasting Companies, Inc. (herein "ABC"), Columbia Broadcasting System, Inc. (herein "CBS") and National Broadcasting Company, Inc. (herein "NBC") (herein jointly "the Networks"), the Regional Director for the Thirty-first Region, on April 18, issued an Order Consolidating Cases and a Consolidated Complaint against Respondent, which was amended by the issuance of a Consolidated Amended Complaint on May 23. Respondent filed timely answers. Hearing on this complaint was concluded on June 13.

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<sup>1</sup>All dates herein are in 1973, unless otherwise noted.

Upon a charge filed in Case No. 31-CB-1313, on July 11, by the Networks, and a charge filed in Case No. 31-CB-1316, on July 16, by AMPTP against the Respondent, the Regional Director, on July 25, issued an Order consolidating those two cases and a Consolidated Complaint. Respondent filed timely answer. By a Joint Motion dated August 2, the parties requested that the four cases be consolidated, and the record reopened for further hearing. This motion was granted by order dated August 10.

Upon a charge filed in Case No. 31-CB-1355, on September 5, against Respondent by QM Productions (herein "QM"), the Regional Director, on September 20, issued a complaint in that case. Respondent filed timely answer. By motion dated November 9, General Counsel requested that Case No. 31-CB-1355 be consolidated for the purposes of hearing and decision with the four cases previously consolidated. On November 13, an Order to Show Cause why this motion should not be granted was issued. The motion was granted at the hearing held on November 26. Thereafter, General Counsel filed a motion dated December 11, to substitute a Second Consolidated Amended Complaint for all complaints previously issued in the above-captioned cases, to which Respondent filed an answer dated December 13. Finally, in lieu of further hearing in these matters, all parties submitted a stipulation of facts with exhibits attached, dated December 17. By order dated January 25, 1974, General Counsel's



motion to substitute the Second Consolidated Amended Complaint for all prior complaints was granted and the complaint and the answer thereto were received into the record, and the stipulation of facts, with specified exhibits, was received, the hearing in this proceeding was closed, and date set for receipt of briefs.<sup>2</sup>

## 2. Allegations

The various complaints issued in this proceeding, cumulated in the Second Consolidated Amended Complaint (herein referred to as the complaint), allege that Respondent violated Section 8(b)(1)(B) of the Act by restraining and coercing employer-members of AMPTP, and NBC, CBS, ABC, and QM in the selection of their representatives for collective bargaining and the adjustment of grievances by threatening to discipline and by disciplining certain persons and classes of persons employed by the aforesaid employers, such persons and classes of persons being, it is alleged, members of Respondent, and supervisors within the meaning of the Act for their respective employers and representatives or potential and likely representatives for their employers for the purposes of collective bargaining or the adjustment of grievances within the meaning of the Act.

Respondent's answer to the complaint, while admitting certain allegations, denies the alleged unfair labor practices.

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<sup>2</sup>Exhibit numbers have previously been assigned to all formal papers with the exception of my Order of January 25, 1974 and General Counsel's telegraphic response thereto, received February 4, 1974. The Order is hereby received as General Counsel's Exhibit 14L, and the response is received as General Counsel's Exhibit 14M.

Upon the entire record in this case, from observation of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Charging Parties,<sup>3</sup> I make the following:

### Findings and Conclusions

#### I. Jurisdiction

AMPTP is an association located at Los Angeles admitting to membership firms engaged in the production and distribution of motion picture and television films, and existing, in part, for the purpose of negotiating, executing, and administering collective-bargaining agreements on behalf of its employer-members with the bargaining representatives of their employees, including the Respondent. AMPTP members collectively annually sell and ship from their studios in California directly to points outside that state motion picture films and other products valued in excess of \$50,000.

ABC, CBS, and NBC each have offices in various locations throughout the United States including California, and each derives gross revenues in excess of \$100,000 from sales to customers located outside California, and each annually purchases goods valued in excess of \$50,000 directly from suppliers located outside California.

QM, a corporation with its principal place of business in Burbank, California, engaged in the production and distribution of motion picture and television films,

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<sup>3</sup>After the decision of the Supreme Court in *Florida Power & Light Co. v. I.B.E.W. Local 641, et al.*, .... U.S. ...., 86 LRRM 2689, the parties were invited to file briefs, no later than August 9, 1974, with respect to the impact of that decision upon this case and did so. I have also issued a separate order correcting some inaccuracies in the transcript.

annually sells such films valued in excess of \$50,000 directly to customers located outside California.

Respondent's answer admits, it is found that the Association, and its members through the Association, CBS, NBC, ABC, and QM are employers engaged in commerce within the meaning of the Act.

Respondent's answer admits, and it is found that Respondent is now and at all times material has been a labor organization within the meaning of the Act.

## II. Preliminary Statement of Facts and Principal Issues

Respondent has for some time represented persons engaged in writing functions employed by members of AMPTP, the Networks, and certain independent producers such as QM. As a result of prior bargaining, Respondent was a party to collective-bargaining agreements with AMPTP, for its members, with the Networks, and with QM due to expire in 1973. The AMPTP agreements were terminated effective March 4, by notice from the Respondent pursuant to the terms of the agreements. On or about that same date, Respondent engaged in a strike against the AMPTP and its employer members which continued until June 24, during which time Respondent picketed some of those employers at various times. Beginning on or about March 29 and continuing until July 12, Respondent engaged in a strike against NBC, CBS, and ABC, and maintained picket lines at the premises of each of them. Beginning on or about March 4, and continuing until March 17, Respondent engaged in a strike against and maintained a picket line at the premises of QM.

In February and thereafter, Respondent adopted and distributed to all its members some 31 strike rules (later reduced to 30, as discussed hereinafter), in anticipation of the strike which ensued. In essence these rules (hereinafter considered in some detail) forbade members of Respondent to do any work of any sort for employers on strike, or to cross picket lines to go upon the premises of such employers without specific permission of Respondent. Respondent took other action and caused certain publicity to issue designed to impress upon its members the consequences of violating these Rules.

At the times material to this proceeding, Respondent's membership included a substantial number of persons engaged in performing functions other than writing for their employers in the industry. Because of their ability to perform in more than one capacity, such as producing, directing, or writing, these persons are referred to as "hyphenates". It would appear that many of these, if not most, have not engaged in creative writing for years. Respondent asserts, however, that even when their principal function is other than writing, the nature of the work is such that they must and do engage in some writing. The hyphenate's principal work function (other than writing) will sometimes be referred to herein as his (or the) "primary function."

General Counsel contends that these hyphenates occupy supervisory positions within the meaning of the Act, and are representatives, or potential and likely representatives, for their respective employees for the purposes of collective bargaining or the adjustment of grievances.



The record indicates that Respondent was particularly concerned that its hyphenate members should not cross picket lines or go to work during the strike. Members who were in a withdrawn status prior to the strike were reactivated. Most of the hyphenates appear to have held only associate membership in Respondent at the time. Those hyphenates questioned indicated their understanding that, as associate members, they had no right to vote on the adoption of the Respondent's strike rules, and did not do so. With one exception, the hyphenates also testified to the same effect with respect to the vote authorizing Respondent to strike. Herbert Wright, an associate producer, testified that at the strike vote meeting he was given a card permitting him to vote on authorization of the strike, but was not given an opportunity to vote on the strike rules.

Respondent's Constitution and By-Laws in evidence (G.C. Exh. 12a) are confusing on the issue. Those in effect until December 1972 provide in Article IV, Section 6, paragraph 1, that associate members shall not have the right to vote, while Article XIV, Section 8 (last paragraph) states certain restricted circumstances in which associate members may vote on strikes. In the latter part of the booklet are proposed changes in the Constitution and By-Laws. Assuming that these were in effect at times material to this case, Article IV, Section 7(b) provides that associate members under certain conditions (different from those noted above) might vote on strikes. However, it is now shown that any hyphenate involved herein satisfied these latter conditions. Counsel for Respondent, during the disciplinary hearing concerning hyphenate-member Coles Trapnell, asserted that Associate Members could not vote on the strike rules as such.

At least one of these hyphenate-members attempted, prior to the strike, to resign from membership in Respondent. In accordance with the provisions of the Constitution and By Laws, Respondent rejected the attempted resignation, "in view of current contract negotiations and the importance to the Guild of maintaining effective communication with its membership," advising that the member must maintain his membership at least during the period of negotiations and probably for 6 months thereafter. This became known to other hyphenates prior to the strike. It was stipulated by the parties that at all times material this refusal to permit any member to resign from membership during the pendency of collective-bargaining negotiations, and for 6 months thereafter, was the policy of Respondent.

From approximately April 6 through about November 8, Respondent served charges for violation of strike rules and notice of disciplinary hearing upon at least 31 hyphenate-members. At least 15 such hearings have been held and penalties imposed on no less than 10 of those charged. It is indicated that other trials were contemplated at the time of the receipt of the filing of the last stipulation of facts by the parties and that appeals were pending from penalties imposed. Other action appears to have been stayed pending disposition of this proceeding.

The major issues to be resolved are the following:

1. The alleged status of the various hyphenates as supervisors and representatives for collective bargaining and adjustment of grievances. This was considerably litigated. However, in its brief, Respondent, as hereinafter noted, appears to concede that hyphenates performing many functions in dispute (other than that of story

editor) are supervisors within the meaning of the Act, and may adjust grievances of employees other than writers represented by Respondent.

2. Whether various actions of alleged restraint and coercion of hyphenates by Respondent designed to compel the hyphenates to cease work for the struck employers, and Respondent's actions in charging, trying, and penalizing such members for going to work during the strike, violated Section 8(b)(1)(B) of the Act. Also whether Respondent's refusal to allow such hyphenates to resign from membership in these circumstances violated the Act.

3. Whether certain issues in this matter should be deferred to arbitration under the parties' collective-bargaining contracts.<sup>4</sup>

### III. The Supervisory Issues

The General Counsel contends that persons performing the following functions are supervisors within the meaning of the Act, and are representatives or potential or likely representatives of their employers for the purposes of collective bargaining or the adjustment of grievances:

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<sup>4</sup>In its answer to the complaint Respondent asserted as three "Separate Special" defenses the claims that 1) by the terms and provisions of the various bargaining agreements, the employers had waived the right to designate Respondent's members as representatives for collective bargaining or the adjustment of grievances during the strike; 2) by the terms and provisions of the various bargaining agreements, the employers had agreed Respondent's members, including supervisors, might refuse to work during the strike "and be subject to Guild discipline for crossing picket lines or working for struck employers . . ."; and 3) that the two issues set forth should be deferred to arbitration. In its original brief at p. 19, Respondent has withdrawn its first two special defenses. The third is considered hereinafter.



1. *Executive Producer, Producer, and Associate Producer.* The producer has the primary responsibility for the production of films for motion pictures or for television. This responsibility begins with the idea or concept for the film or the series; includes involvement in the budget for the film; the employment of a writer or writers who develop and write the scripts under the supervision of the producer or others associated with the producer; the employment of a director and cast for the film, as well as other employees necessary to make the film (cameraman, etc.); the selection of sets, locations; the performance of executive functions during the filming; and the performance of executive functions in the post-production stages, after filming.

The producer has substantial responsibility and authority in adjusting grievances between directors and craft employees, directors and actors and actresses, between two or more actors or actresses, and in other similar situations. Producers also have responsibility and authority to adjust grievances involving writers, as in the case of disputes between writers and story editors. In one instance in which a dispute arose as to whether a commitment had been made to a freelance writer, the producer involved decided that no commitment had been made. The testimony shows that if the producer had decided that a commitment had been made, that would have been binding and resolved the dispute. Producers also make the initial determination in situations in which there may be dispute over the assignment of screen credits to writers, although this is a complex matter, subject to extensive review. In situations in which the film is being shot on a



distant location, the producer may be involved in negotiating or agreeing to short-term agreements with local unions where the services of local craft members are required, and possibly adjusting, or attempting to adjust, local jurisdictional conflicts.

In general, an executive producer supervises one or more producers (this seems to be particularly the case in the television industry where an executive producer may have responsibility for several series or projects at the same time, each with its own producer). The associate producer is an assistant to the producer. Without distinguishing among them in detail, it is clear on this record that persons occupying these positions in the motion picture or television industries have the authority to hire, terminate, and responsibly direct other employees, and to adjust employee grievances, or to effectively recommend such action, and are thus supervisors within the meaning of Section 2(11) of the Act. Respondent does not contest this finding or conclusion (brief, pp. 7-8), except, as noted, in respect to the producer's role in adjusting grievances of writers. (Brief, pp. 4, 7-8). As found above, however, I find that producers, executive producers and associate producers do or potentially may adjust grievances involving writers.

Respondent contends that persons performing the functions considered here, as well as those occupying positions described hereinafter, as a normal part of their work, perform writing functions coming within

the jurisdiction of Respondent. This contention will be considered hereinafter in a separate section of this decision devoted to this issue.<sup>5</sup>

The record indicates approximately 80 hyphenate-members of Respondent in the position of Executive Producer, Producer, or Associate Producer employed by the charging parties in this matter (including major members of AMPTP). Among them, the following were charged by Respondent with violation of its strike rules: Philip Barry, Hugh Benson, Cy Chermack, Robert Cinader, Barry Crane, Jon Epstein, Andrew J. Fenady, Stephen Heilpern, Ron Honthaner, Leonard Katzman, David Levinson, Roger Lewis, James McAdams, John T. Mantley, Thomas L. Miller, Martin Ransohoff, William Roberts, Albert Ruddy, Herman S. Saunders, David Victor and Herbert Wright.<sup>6</sup> Of these, Cermack, Cinader, Crane, Epstein, Levinson, Saunders, Victor, Ruddy, Benson, and Roberts were brought before trial panels set up by Respondent. Some of these were disciplined by Respondent as noted herein-after.

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<sup>5</sup>Respondent adduced considerable testimony concerning certain hyphenates who are legally employed by their own wholly-owned corporations, which corporations furnish the hyphenates' services to employers involved in this proceeding. This is referred to in the record as a "loan out" agreement. The record is convincing and I find that such "loaned-out" employees occupy the same positions as more conventionally employed persons doing the same work and are treated the same by the employers here involved. It is noted that Respondent makes no point of this in its brief.

<sup>6</sup>There are two or three additional producers noted on G.C. Exh. 3 as having received charges who were not listed in the parties' post-hearing stipulation and for whom copies of the charges were not submitted.

2. *Directors.* Persons in this category are in direct charge of the principal photography of the film. They hire or effectively recommend the employment of crew and actors, effectively direct such employees, and may discharge or effectively recommend the discharge of employees. They have authority to and do adjust grievances of such employees. It is found that persons performing the functions of director in the television and motion picture industries are supervisors and adjust grievances of employees within the meaning of the Act.

The record indicates approximately 15 hyphenate members of Respondent in this position employed by the charging parties (without duplicating those listed as producer-directors, or the like). Of these Respondent charged the following with violation of its strike rules: Philip Kaufman, Michael Crichton and Sam Peckinpah, Crichton was brought before a trial panel and was disciplined.

3. *Story editors, story consultants, script consultants, executive story editors, executive story consultants.* Although there may be some differences among these classifications, or in the requirements of the various employers for these positions, these job functions may be considered together for our purposes under the title of "story editor." The story editor is of principal assistance to the producer in the highly important functions of dealing with scripts and writers. The story editor may be, and frequently is, concerned with reading and acquiring scripts, interviewing writers and recommending them for hire (or otherwise), directing and supervising writers in the development of ideas and the preparation of scripts, and in recommending that

writers not be retained. On a television series, the story editor may participate with the producer in the initial determination of any dispute over screen credits. He also may serve as a buffer between management and the writer, as in ameliorating a writer's distress over material that has been rewritten. Thus one executive story editor testified that because he is the first person in the studio that the writer meets, and due to the story editor's close association with the writer, "if he [the writer] has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out." During the disciplinary trial of one in this group, Coles Trapnell, it was indicated that he supervised story analysts employed by the employer.

In all of these functions it is found the story editor is expected to and does use individual judgment, initiative and responsibility. On the basis of the entire record, it is found that those persons in the television and motion picture industries performing the functions of story editor, story consultant, script consultant, executive story editors, and executive story consultants are supervisors and adjust grievances of employees within the meaning of the Act.<sup>7</sup>

Of approximately 15 hyphenate-members of Respondent in this position employed by the charging party in this matter. Respondent charged Robert Blees, Frank Paris, and Coles Trapnell with violation of Respondent's

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<sup>7</sup>In *Metro-Goldwyn-Mayer Studios, et al.*, 7 NLRB 662, at 696, the Board at the request of Screen Writers Guild, Inc., found story editors in the motion picture industry to be executives and supervisors and excluded them from a unit of writers sought by that union.



strike rules and brought them before a disciplinary trial board of Respondent.<sup>8</sup>

4. *Other classifications.* The General Counsel argues that hyphenates in other classifications, who received Respondent's strike rules or were threatened with charges or were charged with violation of those rules, or were tried at disciplinary hearings for violation of those rules, are also supervisors and representatives, or potential representatives, of their employers for collective bargaining or the adjustment of grievances. The record indicates that these persons do occupy executive or management positions. However, my analysis of the record shows that all of the persons revealed by the record who were both charged *and* tried by Respondent for violation of the strike rules are contained in the classification previously considered, except Jerome Bredouw, and the charges against Bredouw were dismissed after trial, and, so far as this record shows, no penalty was assessed against him. In the circumstances it would serve no useful purpose to consider such other classifications in which those hyphenates are employed.

#### IV. The Writing Function

Respondent argues, in essence, *inter alia*, that all of the above categories normally and regularly engage in writing within the jurisdiction of the Respondent, and that it should be inferred, therefore, that those hyphenate members of Respondent who went to work during the strike must have engaged in such writing.

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<sup>8</sup>It is noted that Respondent made no effort during these disciplinary hearings to show that these men did any writing or performed any functions during the strike which were not normal to the primary function of the classification. During

This is largely disputed by witnesses for the General Counsel and defendants at the disciplinary hearings who testified that they do not in the performance of their primary function for their employers normally or regularly perform writing coming within Respondent's collective-bargaining agreements and specifically did not do so during the strike. This requires, at the outset, some consideration of the functions of writers represented by the Respondent under the various agreements.

Referring to the 1970 Theatrical and Television Basic Agreement between Respondent and the employer members of AMPTP, it is noted that the parties recognized that members of the Guild could be employed in capacities other than as writers. It is provided in Article 14, paragraph A, of that Agreement, referring to "writers in non-writing capacities," that where such individual is employed "to render services in a capacity or capacities other than as a writer," those "services shall not be subject to this Basic Agreement."<sup>9</sup> It is further provided that where such an individual is also employed as a writer (as defined in the agreement), such services shall be performed under a separate agree-

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the Trapnell hearing, indeed, Respondent's Counsel stated, typical of Respondent's position in these hearings, that "[i]t is immaterial [to Respondent's charges against Trapnell] what type of services were being rendered, whether they were writing services or other services."

<sup>9</sup>Although the heading of Article 14 would indicate that it applies only to the "television" side of the industry, it is noted that Article 1B1. of the Agreement, which defines the term "writing" in the "theatrical" side of the industry, also adopts the language of Article 14.

Article 1A 11. of the 1970 Networks basic agreement also states that with limited exceptions the agreement "shall not nor is it intended to cover the services of Producers, Directors, Story Supervisors, composers, non-writing capacity. . . ."

ment providing for compensation as set forth in the agreement.

Article 14, paragraph B of that Agreement also provides, in pertinent part, that "A person employed as a writer for a series whose duties include for that series interviewing other writers, suggesting story ideas or script changes to other writers, or recommending approval of material submitted by writers, shall be subject to this Basic Agreement (excluding Executives, Executive Producers, and Producers; and also excluding persons who are employed as bona fide Associate Producers, who do not perform services as a writer for the series and where the above duties of such persons are incidental to their primary duties)."

The term "writer" as defined in Article 1, paragraph B.1.a., and paragraph C.1.a. of that Agreement, includes, in pertinent part, a person "who performs services . . . in writing or preparing . . . literary material or making revisions, modifications, or changes in such literary material . . ., provided, however that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), . . ., or other employees, shall not be subject to this Basic Agreement and such sources shall not constitute such person a writer hereunder: (a) Cutting for time, (b) Bridging material necessitated by cutting for time, (c) Changes in technical or stage directions, (d) Assignment of lines to other existing characters occasioned by cast changes, (e) Changes necessary to obtain continuity acceptance or legal clearance, (f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography, (g) Such changes

in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.), (h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay." These latter eight exceptions were referred to during the hearing, and will be referred to herein, as "A to H functions."

There is no dispute that a person writing an original story, story outline, treatment, or finished script for television or motion pictures is performing writing functions within the meaning of the contract between the Respondent and the various employers. Some persons who have written such scripts may thereafter, if they have the capacities, be engaged to produce those scripts or direct the photoplay made from such a script. In such cases, such director, or the producer would have a separate agreement with the employer covering such sources, in accordance with Respondent's collective-bargaining agreement. Some producers and directors who have the capacity to write may have separate agreements with their employers covering possible writing assignments even in situations in which the employer does not actually require them to write.

An issue arises, however, as to what writing is done on scripts after the writer has delivered a finished script which has been accepted by the employer, and who does such writing. Again there seems no question that numerous changes are made in some scripts prior to principal photography, during principal photography, and thereafter before release of the film. Many of these changes, perhaps most, involve A to H functions, and may be made by producers or directors or story editors whether or not they are members of the Respond-



ent. It is indicated that prior to the strike, other changes of a more substantial nature might be made in the script when the producer or the director desired. Such changes would be made by persons qualified under the applicable contract between Respondent and the employer.

Respondent argues, however, that even when management executives and supervisors perform functions which have been excluded from the bargaining agreements, such as A through H functions, they are nevertheless performing writing functions within the jurisdiction of Respondent. The argument misses the point. It is not necessary to decide here what constitutes writing, or even what different segments of the industry might consider writing as such. The important point is that when these executives and supervisors perform those functions excluded from the Respondent's bargaining agreements they thereby perform functions which the parties have acknowledged do not constitute work reserved to Respondent's non-hyphenate members under the agreements, but rather are accepted as a normal part of the duties and responsibilities of the executives and supervisors (as hereinabove discussed) employed by the employers involved.<sup>10</sup>

## V. Strike Related Activities

### 1. *Respondent's strike rules*

In February, the Respondent promulgated and distributed to all its members, including hyphenates oc-

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<sup>10</sup>In some of the disciplinary trial transcripts, it is noted that Respondent's counsel argued vigorously that functions excluded from Respondent's agreements, such as A through H, were excluded because the economic strength of the employers in bargaining. However, this is the classic way in which management and supervisory rights and functions are differentiated from rank and file functions under a bargaining agreement.

cupying positions discussed above, a list of 31 RULES FOR CONDUCT OF MEMBERS DURING A STRIKE. These received considerable publicity in the local papers and the trade press. Fifteen of these strike rules relate, in whole or in part, to prohibitions against writing for struck employers, or the submission of literary material to such employers (Rules 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 18, 23, 25). Various rules with which we are not particularly concerned here deal with such matters as the use of fictitious names (Rule 15), acts of agents (Rules 17, 20), individual negotiations by members (Rule 21), penalties provided by Respondent's Constitution and By-Laws (Rule 29), and enforcement of the rules by committees (Rule 31). The remaining rules in pertinent part, are as follows:

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time it is to take effect. Members are also prohibited from entering the premises of any struck pro-

ducer for the purpose of viewing any film . . . should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.
22. A member is chargeable with knowledge of all strike rules and regulations, . . . circularized through the mail to the membership and of any strike information made known . . . through . . . trade papers, newspapers, radio broadcasts or telecasts. . . .
24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the extent as members who confine their efforts to writing.
26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.
27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from



the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectible in a suit at law.

28. The Guild shall have the authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than \$100 per day for each day of such refusal to perform.
30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person.

By means of meetings and publicity, and through personal contact, memos, telegrams and letters, Respondent emphasized and confirmed that these rules would be enforced against the hyphenate-members.<sup>11</sup>

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<sup>11</sup>One such communication was a telephone conversation between Herbert Wright, a producer, and Alan Griffiths, Assistant Executive Director of Respondent. During the hearing, Respondent asserted a variance between Wright's testimony and his affidavit held by the General Counsel and further requested that I accept Wright's affidavit as substantive evidence under the rule of evidence in California. See *Starlite Mfg. Co.* 172

(This footnote is continued on next page)



The hyphenate-members were particularly vulnerable to pressure under rule 30 because in their primary work as producers, directors, story editors, and executives, they would be unable to effectively function in the future if writer-members of Respondent refused to work for or with them. In telephone conversations with certain of the hyphenates, agents of Respondent emphasized this consequence should the hyphenate cross the picket line to work. The wife of one hyphenate-member was assured that Respondent would end her husband's rather distinguished career by not permitting writers to work with him if he crossed the picket line. On April 14 during the strike, Respondent issued a press release, which received wide publicity, concerning the filing of charges against "five writer-producers", Jon Epstein, Cy Chermak, Herman Saunders, David Victor and Jack Webb, for "crossing a picket line for the purpose of going to work for a struck company." The release stated that in addition to other possible penalties, if they were convicted, these men would, "according to Guild officials", "appear on a 'Roll of Dishonor,'" and "be listed in Guild publications 'in perpetuity so that Guild members for years to come will never forget' ". The Guild official assertedly "characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.' "

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NLRB 68, 71-3. The issue is not mentioned in Respondent's briefs. I have carefully considered Wright's testimony and his affidavit, and I credit Wright's testimony as given at the hearing. Treating Wright's affidavit as substantive evidence would not affect the findings made herein.

After the issuance of the original consolidated complaint in this matter Respondent, on April 30, rescinded Rule 30, and by letter to all its members, dated May 7, advised:

Old Rule 30 provided that no member shall work with any individual suspended or disciplined because of violating strike rules. The Guild's position has been, and remains, that it will press disciplinary action as vigorously as the law and good union principles permit, against every member guilty of violating strike rules. Because the old rule could be misconstrued to mean that the Guild was maintaining an improper sanction, a matter of anathema to this Guild, the Board of Directors rescinded old Rule 30 at its regular monthly meeting of April 30, 1973. This action was taken voluntarily, in the belief that ample disciplinary measures remain available to trial committees, including penalties of fines, expulsion from membership and other sanctions, and with the conviction that even in the pursuit of strike discipline, members of the Guild do not wish to be a part of an action which carries the odious implications of a "black list."

2. *Pressures on hyphenates by employers and others*

As previously noted, the hyphenates here involved in most cases had personal services agreements with their employers to perform in their primary capacities as directors, producers, story editors, and the like. It would also appear that many were members of labor organizations representing them in those capaci-

ties, some of which organizations, if not all, apparently held bargaining contracts with the employers.

Prior to the strike, various employers parties to bargaining contracts with Respondent sent communications to hyphenates they employed insisting that they come in to work to perform their regular functions other than writing in the event of a strike. The following letter, in pertinent part, from Twentieth Century-Fox Film Corporation is typical:

We intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

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We expect you to fulfill your contractual obligations to us as a supervisor<sup>12</sup> and report to work notwithstanding any picket lines or other attempt

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<sup>12</sup>At this point some employers inserted the specific function, e.g., Director, Producer, etc., for which the individual was engaged by that employer.



to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and which is legally sustained.

Prior to sending these letters, the members of the AMPTP and the networks had determined that they would not require the hyphenate-members of Respondent to write during the strike.

In addition to these letters, it appears that the hyphenates were placed under certain pressure to perform by the unions holding contracts with the employers covering the principal function for which the hyphenate was employed. Thus, according to a counsel for the Directors Guild, at the time of the Respondent's strike, the Director's Guild held a no-strike contract with employers of hyphenates working as directors, assistant directors, and unit production managers, and felt obligated to inform its members that if they refused to render services covered by the bargaining agreement and the hyphenate's personal service contracts (other than writing), they would be subject to suits for large damages and other penalties.<sup>13</sup>

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<sup>13</sup>This statement was made during the disciplinary trial of John Michael Crichton. There are indications of similar action by the Producers Guild, and legal action taken against that union by Respondent.



### 3. *Enforcement of Respondent's strike rules*

As has been previously noted, Respondent, by issuance of the strike rules, by a meeting with the hyphenate members prior to the strike, by communications and publicity, emphasized that it would take disciplinary action against the hyphenates who went to work during the strike in any capacity. The hyphenates held meetings of their own to determine the proper course to follow.

Some hyphenates went to work. The record shows that a number of the hyphenates (I would assume most of them, if not all) advised their employers that they would do no writing, but would only perform services under their personal services contracts as producers, directors, etc., as the case might be. There is evidence that Respondent was informed of this.<sup>14</sup>

During the various disciplinary trials of the hyphenates who worked during the strike, Respondent, as noted above, for the most part professed little or no interest in what kind of work was done during

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<sup>14</sup>Frank R. Pierson, a producer, advised Respondent that he had a personal services contract to produce a film which he intended to perform during the strike, that the script was finished and no more writing services would be performed. Pierson offered to provide and did later provide a copy of the final shooting script so that Respondent "could compare it with the shooting continuity . . . to see whether . . . anyone had indeed done any writing." Herbert Wright, after informing Respondent that he would work only as an associate producer and was not employed to write, nor would he write, was advised that he would be in violation of the strike rules if he went to work. Crichton, who performed as a director during the strike, also informed Respondent that he had ceased writing on the project and testified that Respondent could confirm this. During his disciplinary hearing it appears that Crichton's employer did provide means for confirming this. Paris, an executive story editor informed Respondent that he would work in an executive capacity. Trapnell, also an executive story editor, did work as an executive during the strike.

the strike, and presented no proof that the work done by the hyphenates was covered by the recently terminated contracts held by Respondent.<sup>15</sup> The evidence is that the hyphenates who worked during the strike performed the normal functions of the primary positions for which they were employed prior to the strike, e.g., director, producer, story editor, etc., or in some other executive position, and exercised the authority appertaining to such positions.<sup>16</sup>

From April 6 through November 8, 1973, Respondent notified more than 30 hyphenate-members that they had been charged with violation of Respondent's strike rules and set hearings on the charges. The only rules alleged to have been violated were rules 1, 12, 13 and 28. Most hyphenates were alleged to have violated rules 1, 12 and 13; some only rules 12 and 13; some rules 1, 12, 13 and 28; some rules 12, 13 and 28, and one only rule 12. Typical of the language of the charges is the following:

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders

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<sup>15</sup>It was stipulated at the hearing in this matter that counsel for the Respondent who participated in the disciplinary hearings instituted by Respondent would testify that he took the position at such hearings that the hyphenates charged "are subject to discipline for crossing Respondent's picket line without regard to whether they cross the picket line for the purpose of performing bargaining [unit] services for a struck employer or not. And that the charges will properly lie for crossing the picket line even if the person charged has given assurances to a representative of [Respondent] that he is not and will not perform any [writing] services for the struck employer."

<sup>16</sup>E.g., Robert A. Cinader, during his disciplinary hearing, referred to the adjustment of a dispute between a cameraman and an actor and others; Producer Albert S. Ruddy testified to hiring a lead actor; others asserted their general function and authority as supervisors and in the adjustment of grievances.

and Sections 1, 12, 13, and 28 of the Rules for the Conduct of Members during a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which is attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at CBS Studio Center, during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Columbia Broadcasting System, Inc., a company against whom the Guild was at such times on strike; and (3) refusing to perform picket duties during the strike after having been requested to do so by representatives of the Guild.<sup>17</sup>

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The record contains the transcript of disciplinary trials of 15 of those charged. The charges against at least one of these was dismissed. From June 25 through September 28, 1973, Respondent's Board of Directors issued the following disciplinary penalties against 10 hyphenate members in addition to costs of the hearing: Two were expelled from membership and fined \$50,000 each; one was expelled from member-

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<sup>17</sup>Testimony by Respondent's officials in the disciplinary hearings makes clear that passes would not have been granted to hyphenates to go in to work as producers, directors, or the like, even if requested. It is also noted that some hyphenates did agree to perform picket duty at some places notwithstanding they were crossing other picket lines, which, understandably, tended to create some confusion.



ship and fined \$10,000; one was suspended from membership for 2 years and fined \$10,000; one was suspended for 2 years and fined \$7,500; one was suspended for 3 years and fined \$5,000; one was expelled from membership and fined \$2,000; one was expelled and fined \$100; and one was suspended for 2 years and fined \$100.<sup>18</sup> These penalties received wide publicity in the local press and trade papers. The appeals of nine of these men has been voted upon by Respondent's membership at a special meeting and the penalties were drastically reduced. Apparently all remaining actions with respect to discipline of hyphenate-members for working during the strike are now being held in abeyance pending resolution of these cases.

#### VI. The Requests for Arbitration

During the course of the strike, by letter dated April 28, 1973, Respondent made certain requests for arbitration upon AMPTP and the Networks, with carbon copy to the Board's Regional Director. The following letter to AMPTP sets forth the basis for the requests:

Gentlemen:

Reference is made to the Writers Guild of America 1970 Theatrical and Television Film Basic Agreement ("Agreement"). A dispute exists between the Guild on the one hand and the Association its member companies on the other hand concerning the interpretation of the terms of the Agreement and their application and effect with respect

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<sup>18</sup>The 10 hyphenates penalized for violation of Respondent's strike rules were Hugh Benson, Robert Bles, Cy Chermack, Jon Epstein, David Levinson, John Mantley, Herman Saunders, David Victor, Robert Cinader and Barry Crane. No disciplinary hearing transcript for Crane appears in the record.



to the effect of the current strike by the Guild on the employment contracts of its members and the claimed right of yourself and the companies to complain of the Guild's enforcement of its strike rules with respect to all its members, including those employed in other capacities. The Guild submits the following questions to grievance and arbitration:

1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and

2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threatened or imposed by the Guild on any of its members.

This will constitute a notice of grievance in accordance with the provisions of the Agreement with you and your member companies that the Guild submits the dispute to grievance and arbitration pursuant to the provisions of Articles 10, 11, and 12 of the Agreement. In that connection, the Guild is willing to waive the grievance step and proceed directly into arbitration.

By letters dated May 14, and May 18, AMPTP and the Networks replied denying Respondent's grievance and request for arbitration. The pertinent part of the AMPTP letter, in substance similar to the Network's reply, is as follows:

This is in response to your letter of April 28, 1973, in which you claimed that there is a dispute between the Guild and the Association and its member companies concerning the interpretation and application of the terms of the . . . ("Agreement") in connection with the current strike of the Guild.

\* \* \*

In view of the legal nature of the questions raised by you, and by virtue of the fact that your letter was obviously an effort to make a record for purposes of the imminent National Labor Relations Board proceeding in which a complaint has been issued against the Guild, your letter was carefully reviewed by our attorneys.

Your request to arbitrate the foregoing issues is hereby denied for the following reasons:

1. The Grievance and Arbitration procedure which you seek to invoke is no longer in effect between the Guild and the members of the Association as to any matters arising subsequent to March 5, 1973. By your letter of February 2, 1973, you terminated the collective bargaining agreement containing these provisions effective March 4, 1973. Additionally, after we had reached an impasse by letter of March 27, 1973, we advised you that effective April 2, 1973, our member companies intended to effectuate certain

changes in working conditions including that they would no longer apply the Grievance Arbitration provisions of the Agreement, except as to matters arising before March 5, 1973. You were given an opportunity to bargain about this intended change but failed to do so and on April 2, 1973, said change was implemented.

2. There is no colorable claim that could be made for the applicability of the Grievance and Arbitration Procedure of the Agreement to the two issues raised by you even if such Grievance and Arbitration Procedure were still available. The effect of Article 7 upon the status of individual employment cannot possibly be subject to grievance or arbitration, inasmuch as the status of such agreements is expressly excluded from grievance and arbitration. There is not a word in the entire Agreement which would support the position taken in the second issue which you have posed. You have heretofore advanced this theory unsuccessfully to the General Counsel of the National Labor Relations Board. You will no doubt urge it again in the impending hearing on the complaint issued by the General Counsel.

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In Respondent's answer to the complaint, it raised three affirmative defenses based upon the above. In the first two "special defenses," Respondent asserted, almost *in haec verba*, the two positions set forth above which would have required the Board to interpret the agreement, or find the defenses irrelevant. In its original brief, as previously noted, Respondent has withdrawn these two defenses. In Respondent's "Third



Separate Special Defense," Respondent recites the fact that it has requested the Association and the Networks to arbitrate the two issues set forth, and concludes: "In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof."

#### Analysis and Conclusions

Under Section 8(b)(1)(B) of the Act it is an unfair labor practice for a labor organization "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The Board, in a series of cases, some of which are discussed in *Florida Power & Light Co. v. IBEW Local 641, supra*, has previously held that action by a union to restrain or coerce the performance of duties by supervisors who were or might be selected by their employers for the purposes of collective bargaining or adjustment of grievances violates that section of the statute. Thus it has been held that union threats to discipline supervisors for allegedly violating bargaining agreements or asserted practices or policies of the union, charges brought by a union against such supervisors, trials held, and penalties levied against them for contravening the purposes and directives of the union were prohibited by this section of the law, on the ground that such action subverted the loyalties the employer was entitled to expect from the supervisor in the performance of his functions and deprived the employer of the supervisor whom the employer had selected—or potentially



might select—to represent the employer for purposes of collective bargaining or adjustment of grievances. In the two cases considered by the Supreme Court in *Florida Power & Light*, the Board had held that union discipline of union-member supervisors who had crossed union picket lines and performed rank and file struck work during the strikes involved there thus violated Section 8(b)(1)(B). The Court of Appeals for the District of Columbia, which considered these cases, disagreed. As stated by the Supreme Court (slip opinion p. 7, footnotes omitted):

In a 5-4 decision, the court [of appeals] held that “[S]ection 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank and file struck work,” and accordingly refused to enforce the Board’s Orders. Section 8(b)(1)(B), the court held, “was intended to proscribe only union efforts to discipline supervisors for their actions in representing management in collective bargaining and the adjustment of grievances. It was the court’s view that when a supervisor forsakes his supervisory role to do work normally performed by nonsupervisory employees, he no longer acts as a managerial representative and hence no longer merits any immunity from discipline” 487 F.2d at 1157. We granted certiorari, 415 U.S. ...., to consider an important and novel question of labor law.

The Supreme Court itself affirmed the Court of Appeals by a vote of 5-4, holding that the legislative history of the pertinent amendments to the Act made it clear that in enacting Section 8(b)(1)(B), “Congress

was exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment" (slip op. p. 13), and not with the general problem of the supervisor's conflict of loyalty as between his employer and his union. As the Supreme Court said (slip op. p. 14, emphasis in original):

Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment. The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of §8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.

The Court then noted that in the cases before it (*Florida Power & Light* and *Illinois Bell*) "it is certain that these supervisors were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto, when they crossed union picket lines during an economic strike to engage in rank and file struck work." (Slip op. p. 15)

The Court concluded, "for these reasons, we hold that the Respondent unions did not violate Section 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank and file struck work." (Slip op. p. 23)

In coming to this conclusion, the Court also noted that the result was not inequitable, inasmuch as it derived from the options exercised 1) by the employers in recognizing the unions as representatives of these supervisors under the union contracts, and 2) by the supervisors in becoming and remaining members of the unions for their own benefit. As to the supervisors, the Court stated, in pertinent part (Slip op. pp. 21-22, citations omitted):

There can be no denying that the supervisors involved in the present cases found themselves in something of a dilemma, and were pulled by conflicting loyalties. But inherent in the option afforded the employer by Congress, must be the recognition that supervisors permitted by their employers to maintain union membership will necessarily incur obligations to the union. . . . And, while both the employer and the union may have conflicting but nonetheless legitimate expectations of loyalty from supervisor-members during a strike, the fact that the supervisor will in some measure be the beneficiary of any advantages secured by the union through the strike makes it inherently inequitable that he be allowed to function as a strikebreaker without incurring union sanctions. The supervisor-member is of course not bound to retain his union membership absent a union security clause, and if, for whatever reason, he chooses to resign from the union, thereby relinquishing his union benefits, he could no longer be disciplined by the union for working during a strike. . . .



In these cases, the supervisors' dilemma has been somewhat exaggerated . . . in *Illinois Bell*, the company did not command its supervisors to work during the strike and expressly left the decision to each individual. Those who chose not to work were not penalized, and some were in fact promoted by their employer after the strike had ended. Those who did work during the strike but performed only their regular duties were not disciplined by the union. In *Florida Power*, the record does not disclose whether the supervisors crossed the picket lines at the company's request or not, but in any event, the union did not discipline those who did so only to perform their normal supervisory functions.

Similarly, in *N.L.R.B. v. San Francisco Typographical Union No. 21, etc. (California Newspapers, Inc.)* 486 F.2d 1347 (also relied upon by Respondent), where the Board had found the union there involved had violated Section 8(b)(1)(B) by disciplining supervisor-members for crossing the union's picket lines, the Court held that "the Board's broad interpretation of Section 8(b)(1)(B) . . . is an unjustified extension of the limited language of Section 8(b)(1)(B). Had the members elected to resign from the union, the power of the Union over them would have ended. [Citation omitted] But here the members remained in the Union, and therefore continued to be subject to their obligations as members." The Court also noted that although those disciplined were supervisors, "the Union did not punish them for exercising any management duty." (486 F.2d at 1349-50)



Compare *Scofield v. N.L.R.B.*, 394 U.S. 423, where, in the course of holding that Section 8(b)(1)(A) did not proscribe a union's enforcement of productivity ceilings through the discipline of members, the Supreme Court stated (at p. 430), ". . . Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members *who are free to leave the union and escape the rule.*" (Emphasis added.)

In this case we are concerned with certain supervisory, executive, and managerial personnel (referred to as hyphenates) principally employed to perform functions *not* covered by Respondent's collective-bargaining agreements (which agreements provide for the conditions of employment and the recompense of writers who furnish certain writing services to the television and theatrical industries), but who are nevertheless members of Respondent and who on occasion may do work properly falling within the terms of those bargaining agreements. The case involves the attempts of Respondent to coerce and restrain those hyphenates from going to work in any capacity during the course of a strike by Respondent against the hyphenates' employers over the terms for renewal of Respondent's bargaining agreements. Respondent promulgated and distributed strike rules to all its members forbidding the members to go to work in any capacity during the strike. These received wide publicity. These were further enforced by personal and written communications, and at Respondent's meetings with the hyphenates, to impress upon them that the strike rules applied

to the hyphenates and would be enforced against them.<sup>19</sup> Some hyphenates who allegedly violated one or more of the strike rules were charged, tried before trial boards of Respondent, and when convicted were disciplined.

During this same period, Respondent also had and enforced a policy, well known to the hyphenates, under which Respondent refused to permit such hyphenate-members to resign from membership prior to or during the strike.

At the same time, many of the hyphenates, probably most, were obligated to perform their primary managerial and supervisory functions under personal service contracts with their employers. Prior to the strike the hyphenates were informed by their employers that they would be expected to fulfill their contracts and come in to perform their normal work during the strike. In some cases, perhaps most, these primary functions were also covered by collective-bargaining agreements with other labor organizations requiring that the hyphenates not engage in strikes. At least one or two such unions directed their hyphenate members to perform during the strike in accordance with that union's contract.

It is clear, as has been found, that the normal performance of the hyphenates' primary functions involves the adjustment of employee grievances, and, in the case of producers on distant location, to engage

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<sup>19</sup>Originally one of the rules, later officially rescinded, provided for the perpetual ostracism of any hyphenate working during the strike, which would clearly have wrecked the further careers of such persons. The impact of the rule itself, as well as the indication of the implacable attitude which prompted it, were clearly coercive of the hyphenates' freedom of action.

in collective bargaining with labor organizations. Those hyphenates charged by Respondent with violation of its strike rules, who testified in this hearing or before Respondent's trial boards denied performing any writing function during the strike other than that which had been commonly agreed in the past to be permissible for hyphenates performing supervisory and managerial functions. Indeed, the employers had determined in advance not to require writing of the hyphenates who worked during the strike. Evidence was offered to Respondent by certain hyphenates to substantiate the fact that those hyphenates, though working during the strike, nevertheless did no writing. Respondent, indeed, points to no instance of any hyphenate doing any "rank and file" work during the strike. In its original brief, Respondent stated its position as follows, in pertinent part (Orig. brief pp. 11-12, emphasis in original):

. . . we believe that the record here supports an inference that hyphenate Guild members who crossed picket lines necessarily performed services of a non-supervisory character which bring them within [the Court of Appeals' decisions in *Illinois Bell* and *California Newspapers*].

. . . Virtually all of the hyphenate writers called as witnesses by General Counsel conceded that they performed only (a) through (h) writing functions which, upon their view, were not strike defeating because such services were outside the coverage of the Guild contract. . . .

. . . Rather, it is our contention that such writing falls within the prohibitions of [Respondent's strike rules] and that the scope of such rules was legally permissible. . . .



The permissible scope of the strike rules, as to hyphenates, can only be judged fairly in connection with the production activities of the struck employers which the Guild had the right to frustrate . . . the most critical service of the producers is the finding and participation in the hiring of writers . . . while this is a statutory supervisional function, nevertheless, in a strike situation the performance of this non-writing function requires the producer to be the active recruiter of strike-breaking writers. The average foreman union member in an industrial plant is not in a strike situation, normally called upon to act as the *principal recruiter of strike breakers*.

In order to perform under his producer contract, the hyphenate Guild member necessarily must place himself directly in direct opposition to the strike strategy of the Guild and, at the same time, be free from the normal discipline imposed upon strike-breakers. The matter of disloyalty arises from the continued performance of the hiring function itself.<sup>20</sup>

These arguments, however, do not meet the issue. The fact is that, according to the record, such writing as the hyphenates did during the strike was limited to that commonly accepted in the industry as part of the managerial and supervisory function and thus was not rank and file work. I so find. Indeed, although a number of Respondent's strike rules forbade writing

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<sup>20</sup>In its supplementary brief, Respondents states that while it considers the "record as a whole" supports a finding that "rank and file" work was done, its position is that *Florida Power* makes the finding "irrelevant" (Supp. brief p. 5)



for struck employers, none of the hyphenates was charged with violating those rules. It was stipulated that Respondent's counsel, during the disciplinary hearings, was not concerned with what work the hyphenates did when working during the strike.

In its supplementary brief, Respondent argues that it would be difficult to determine in these cases what the supervisors did after they went to work during a strike, for the supervisors and employers would not likely cooperate. However, in the one instance in which Respondent's trial panel is shown to have requested evidence, it was supplied by the employer. In another instance the hyphenate supplied evidence voluntarily, without request. In one of the disciplinary trials there was testimony by a union member that when he returned to work after the strike, he found no writing that had been done by a hyphenate (with whom the member was closely associated) who had worked during the strike, the union member stating that he was satisfied that some writing had been done by an executive who was not a member of Respondent. From this it seems clear that if hyphenates working during the strike had performed rank and file work, Respondent had means for discovering it.

Though the evidence is sparse, the record indicates that during the strike, where the situation arose, the hyphenates dealt with grievances of employees who worked during the strike, or, in any event, were available to deal with such matters in their normal capacities when and if such grievances arose.

Further, it has long been established that an employer may legally employ replacements for striking employees during a strike (in union terminology "strike-

breakers") see *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345. Thus action by managerial or supervisory employees in recruiting employees during a strike would manifestly fall within the normal functions of such persons. There is no evidence of which I am aware that any hyphenate performing as a producer during the strike (as argued by Respondent) recruited or hired a writer during the strike—for the most part the evidence is that such producers were involved with scripts already written and ready for production—but if any such writer was recruited or hired by a producer, this was clearly a proper managerial or supervisory function.

Nor is it material, in the circumstances of this case, that by going in to work at managerial and supervisory functions during the strike, hyphenate-members frustrated Respondent's strike strategy, or provided the employers with more economic clout than they otherwise might have possessed. Respondent cannot deny the hyphenates the right to resign from membership, and thus be free of the obligations of membership, while at the same time argue that because the hyphenates continued to be members they cannot be "free from the normal discipline imposed upon strike breakers." It was well known among the hyphenates that Respondent would not permit them to resign prior to or during the strike. At least one hyphenate's attempt to resign from membership in Respondent during this period was rejected. It is, of course, not known how many hyphenates would have resigned if this had been an option available to them. It is inferred that at least those who went back to work during the strike would have done so, and possibly others.

The rights of the hyphenates and their employers are not reduced because the exercise of those rights might make Respondent's position more difficult.

The results of the strike would be of only problematical benefit to many of the hyphenates involved. Respondent's contracts did not cover the hyphenates' managerial and supervisory functions (as was the situation in *Florida Power*) and would have benefited the hyphenates only if they engaged in writing covered by the bargaining agreements. There was testimony from a number of hyphenates that they had done no substantial writing of such character for a considerable number of years. There is little indication that the hyphenates received other substantial benefits from their membership in Respondent, except that derived from being part of the writing community which provided significant contracts with writer-members of Respondent, a sense of pride in belonging to the organization, and, perhaps most important, providing the hyphenate with a wide range of capabilities and thus enhancing his usefulness to his employer.

It has been previously found that those hyphenates occupying the positions of Executive Producers, Producers, Associate Producers, Directors, Story Editors, Story Consultants, Script Consultants, Executive Story Editors and Executive Story Consultants, as considered hereinabove, are supervisors within the meaning of Section 2(11) of the Act selected by their employers to adjust grievances, and, in the case of the producer function, to negotiate agreements with labor organizations within the meaning of Section 8(b)(1)(B) of the Act. On the basis of the above discussion and the record as a whole it is found that by issuing



strike rules designed to compel such hyphenates from going to work during the strike called by Respondent, and by meetings, personal contacts, telegrams, and phone calls designed to restrain and coerce such hyphenates from going to work during the strike, Respondent restrained and coerced the hyphenates from performing managerial and supervisory services for their employers during the strike, including the adjustment of employee grievances and participation in collective bargaining, and thus coerced and restrained those employers in the selection of representatives for collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B); that those hyphenates involved in this matter who worked during the strike performed managerial and supervisory functions including the adjustment of grievances on collective bargaining as required, and did not perform rank and file work; and that by charging, trying, and disciplining such hyphenates who worked during the strike in such circumstances, Respondent further coerced and restrained the employers in the selection of their representatives for the purposes of collective bargaining within the meaning of Section 8(b)(1)(B) of the Act. It is therefore found that Respondent, by the activities set forth above, violated Section 8(b)(1)(B) of the Act.

In coming to this conclusion, I have given careful consideration to Respondent's contention that the Supreme Court in *Florida Power*, not only disapproved of the Board's finding that a violation of Section 8(b)(1)(B) had occurred in those cases, but, by completely overturning the Board's rationale in those cases, in effect held that coercion, restraint and discipline of supervisor-members by a labor organization for working during a strike cannot be held by the Board to violate



the Act. I disagree. It is clear that Respondent's action in this case violated the plain meaning of the statute without the necessity of resort to statutory exegesis. To illustrate: A person performing the function of a director acts in a managerial or supervisory capacity, which normally includes the adjustment of grievances of actors, actresses, craft employees and others. One occupying the position of a producer normally has a similar capacity and similar duties with respect to employee grievances. In addition, if the film is being shot on distant location the producer has authority to negotiate on the spot agreements with local unions. Thus when Respondent prevented or sought to prevent, such hyphenate members from going to work in their managerial and supervisory capacities as producers and directors during the strike, Respondent obviously coerced and restrained their employers in the selection of those specific producers and directors for the purpose of collective bargaining and the adjustment of grievances of employees working during the strike within the plain meaning of the statute. Similarly, those persons employed as story editors or in like classifications perform executive functions normally, and appear to have done so during the strike, in which the record indicates they were engaged as supervisors and actual or potential representatives of their employers for the adjustment of grievances.<sup>21</sup> Respondent, by coercing or restraining persons in these classifications from going to do their normal work thereby actually coerced and

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<sup>21</sup>As previously noted, two executive story editors, Paris and Trapnell, appear to have worked as executives during the strike. According to the disciplinary transcript, Trapnell is a supervisor over story analysts who apparently did not strike.

restrained their employers from selecting those persons as the employers' representatives for the adjustment of grievances and for collective bargaining during the strike.

The General Counsel also contends that Respondent's rule restricting the right of hyphenate-members to resign from membership should also be found to violate the Act. This raises what seems to me a quite important and difficult issue, one which may well have different consequences for supervisors as distinguished from rank and file employees.<sup>22</sup> I do not, however, have to determine these matters in this case. The General Counsel did not allege this matter as a violation of the Act in his complaint, nor put it properly in issue during the hearing. In the circumstances, I do not pass upon the issue.

Lastly, I have carefully considered Respondent's contention that certain issues should be referred to arbitra-

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<sup>22</sup>As to the rank and file employees, since they are compelled by law to accept labor organizations chosen by the majority in the unit, and may be compelled to join or assist such unions even if violently opposed to them, and to comply with their rules even if personally obnoxious to the employees involved, it may well be argued that such employees should be afforded reasonable opportunity at proper times to resign their membership in such organizations and escape the imposition of such rules. Some commentators who have considered the subject indicate that this is a likely direction of the law. See *Restriction on the Right to Resign: Can a Member's Freedom to Escape the Union Rule Be Overcome by Union Boilerplate*, 42 Geo. Wash. L. Rev. 397 (1974); 26 Vand. L. Rev. 837 (1973); *Union Disciplinary Fines and the Right to Resign*, 30 Wash. & Lee L. Rev. 664 (1973); 5 St. Mary's L. J. 176 (1973); 40 Geo. Wash. L. Rev. 330 (1971). There may be, as the Court of Appeals for the First Circuit has indicated, "... a limit of reasonableness beyond which a union may not be permitted to go in holding captive its members." See *N.L.R.B. v. Int'l Union, U.A.W.*, 297 F.2d 272, 276 (1961).

tion and the complaint in this proceeding be dismissed. I have determined that this contention should be denied for the following reasons:

1. The parties have not agreed that the issues presented by the complaint in this matter should be determined by arbitration. The bargaining agreements held by Respondent which expired on or about March 4, or shortly thereafter, contain no restriction upon Respondent's issuance of strike rules, or upon its right to restrain members to comply with its rules, or upon Respondent's right to discipline its members, or upon Respondent's right to strike when it did. Respondent, indeed, does not claim that there were any contractual provisions which forbade or approved of such actions. It does claim that there was a contractual provision which would have protected the hyphenates if they desired to respect Respondent's picket line.<sup>23</sup> The employers, on their part, refer to provisions of the agreements in support of their contentions that the agreements do not cover or apply to the functions performed by the hyphenates, and further that these provisions of Article 7 are specifically exempted from arbitration. There is no need to consider the merits of these contentions. We are not here concerned with whether there was agreement that these hyphenate-members

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<sup>23</sup>Section 2 of Article 7 in certain expired agreements provided, in pertinent part, that "If, after the expiration or other termination of the effective term of this Basic Agreement, the [Respondent] shall call a strike against any Company, then each respective current employment contract of writer members of [Respondent] (hereinafter . . . referred to as 'members') with such Company shall be deemed automatically suspended, both as to service and compensation, where such strike is in effect, and each such member of [Respondent] shall incur no liability for breach of his respective employment contract by respecting such strike call . . ."



of Respondent could respect Respondent's picket lines or its strike call with impunity from action by the employers, but we are concerned with whether the Respondent may legally restrain and coerce the hyphenate-members from going to work, at the insistence of their employers, to perform functions not covered by Respondent's contracts, and whether Respondent may discipline such members for going to work in such circumstances. No contractual basis appears and Respondent points to none which would authorize an arbitrator to pass on such issues.<sup>24</sup>

Assuming, without deciding, that the employers had agreed to absolve Respondent's hyphenate-members of all liability for breach of their personal services contracts (which, as noted, the employers vigorously dispute), it does not follow, as Respondent argues, that the employers thereby agreed not to ask, direct, or insist that such members come in to work, or agreed that the employers would not select such members as their representatives for adjustment of grievances or collective bargaining, or that the employers agreed that Respondent could restrain or coerce the members not to work, or, if the members did come in to work at the employers' insistence, that Respondent could discipline the members for doing so.

2. There is substantial doubt that Respondent's actions which are the basis for the complaint in this

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<sup>24</sup>Cf. *Houston Mailers Union No. 36, etc.* (*Houston Chronicle*), 199 NLRB No. 36, relied upon by Respondent, in which the Board held that where the employer and the union there involved had specifically agreed in their bargaining agreement that the union "shall not discipline the foreman," and where the only issue before the Board concerned discipline of a foreman by the union, the Board deferred to the arbitration process in accordance with the bargaining agreement of the parties.



matter are subject to arbitration in any event. Almost all of Respondent's conduct with which we are here concerned, including the charges against the hyphenates, the disciplinary trials and the penalties imposed, occurred after the termination of the bargaining agreements and at a time when neither Respondent nor the employers had consented to arbitration of their actions.

3. The legal issues involved in this proceeding are matters of importance to the administration of the Act, as shown by the Supreme Court's recent decision in *Florida Power*. The application of the principles laid down in that decision and the development of the law in this area should be made by the Board in a unified and consistent fashion, and not delegated to the diverse opinions of various arbitrators who have neither been selected to administer the Act nor sworn to do so. This matter is highly complex and involves many factual and legal issues having little or no relation to contractual questions. The parties have spent much time litigating these issues and at considerable expense. It would seem to me an act of administrative abnegation of duty to tell the parties to start over again before another tribunal when the proceeding has already been tried before the agency appointed by Congress to hear and decide the issues.

#### Conclusions of Law

1. The employer members of the Association of Motion Picture and Television Producers, Inc., American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., and QM Productions (herein collectively referred to as "the employers") are, and each of them is,

an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

2. Writers Guild of America, West, Inc. ("the Respondent") is a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing the employers of hyphenate-members of the Respondent, and each of the employers, in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances, as found hereinabove, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Sections 2(6) and (7) of the Act.

#### The Remedy

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(b)(1)(B) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The record is convincing that Respondent, well aware of the primary supervisory, management, and executive functions of its hyphenate-members, drafted its strike rules and enforced them with the intent of compelling those hyphenate-members from going to work during the strike, without regard to the capacity in which they performed or the work done. In particular, by threatening to blacklist in perpetuity such hyphenates who worked during the strike, the rules threatened to drive those hyphenates out of the industry. Though

the mandatory effect of the rule was rescinded (see Resp. Exh. 11), there are other indications that Respondent's actions encourage a voluntary blacklist. Thus, in its letter to members explaining their options on appeals from penalties imposed upon certain hyphenates who worked, Respondent stated, *inter alia*, "There is obviously a stigma attached to expulsion which might cause individual members of the [Respondent] to refrain from working for such a person. The Guild itself cannot order its members to refrain from working with an individual merely because he was expelled." (Resp. Exh. 12) In at least one instance, in the disciplinary transcript relating to Robert Blees, a writer-member of Respondent expressed his intent not to work with Blees because the latter had worked during the strike, though the writer-member acknowledged that he was under no compulsion from Respondent to take that position. I fully realize that this member as well as others might have adopted this position even if Respondent had not suggested it by its rule and other communications and publicity. However, the fact is that Respondent did suggest it, and it is now impossible to disentangle the consequences flowing from its actions. I shall recommend a broad order in order to restore the *status quo* and remedy the various effects of Respondent's actions found to have violated the Act.

The General Counsel and the Charging Parties have requested a number of particular remedies, some of which I find appropriate in the circumstances and have included in the following order. It is requested that the fines, suspensions, and expulsions from membership of the hyphenates be rescinded and revoked.



In the ordinary case I would be loath to hold that a union may not suspend or expel a member who worked during a legal strike. However, here, where the hyphenates have been forced to undergo the stigma of suspension or expulsion by Respondent's deliberate action in refusing them a free choice to withdraw in a normal manner prior to working during the strike, and where Respondent has further suggested that members not work with hyphenates who were expelled, I am convinced that the effects of Respondent's actions can best be remedied by restoration of the *status quo ante*. It is also noted that in the four cases in which appeals were perfected, Respondent's membership rejected the penalties of suspension or expulsion. Inasmuch as the record is incomplete as to the status of the other hyphenates charged, I shall recommend the normal remedial order as to all, without distinction between those whose suspension or expulsion has already been revoked and those for whom it has not.

It is also requested that Respondent be ordered to mail a copy of the notice to each of its members and to publish the notice in the local trade papers, "Hollywood Reporter" and "Daily Variety", as well as in local papers of general circulation. The record shows that Respondent was careful to mail its strike rules, directions, orders and instructions to all its members in order to give those actions wide and personal service; and further that the matter of compulsion of the hyphenate-members to abide by Respondent's rules and the trials of those members and the penalties imposed upon them was given wide publicity in the trade papers and the local press through press releases



and other information supplied by Respondent and its officers. The request that equal publicity be given to the Board's notice is clearly justified. However, I believe that this can be accomplished through requiring Respondent to publish the Board's notice in the two trade papers for one week (six consecutive issues). I do not think that it is necessary that the notice be published by Respondent in the local press, or that the publication in the trade papers be for three consecutive weeks as requested. I further do not agree, as has been requested, that there is any necessity that the notice be read at Respondent's membership meetings, in addition to the normal posting of the notice, and the mailing and publication just considered.

There is a further request that Respondent be ordered to reimburse those hyphenates who were brought to trial for violating Respondent's strike rules for the reasonable expenses of defending their conduct in their trials. A persuasive argument can be made on the point. There is no question but that Respondent deliberately used the difficult position of the hyphenates in a power play against the employers. However, the hyphenates are not entirely without responsibility in the result; for whatever their reasons, they had maintained membership in Respondent until the very last minute. There is also no evidence that Respondent did not sincerely believe that it had the right to do as it did. While sincerity does not excuse violation of the law, it has weight in considering an unusual

remedy such as that requested. I do not believe that this remedy is justified in these circumstances.

Upon the foregoing findings of fact, conclusions of law and the entire record, I issue the following recommended:<sup>25</sup>

### ORDER

Writers Guild of America, West, Inc., the Respondent herein, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing any employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances:

(1) by issuing rules, orders, directions or instructions in any form to any supervisor, executive or other management personnel whose functions involve or may involve collective bargaining or the adjustment of grievances not to perform supervisory, managerial or executive functions for such employer, or

(2) by threatening any such employer representative with fines, suspension or expulsion from membership, blacklisting, ostracism, or any other penalty or reprisal for performing supervisory, managerial or executive functions for such employer, or

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<sup>25</sup>In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(3) by citing or charging any such employer representative with violation of any such rule, order, direction or instruction, or by summoning any such employer representative before any committee, board, panel, or tribunal to be tried for, or by trying any such employer representative for violation of any such rule, order, direction or instruction forbidding such representative from performing supervisory, executive, or managerial functions, or

(4) by fining or otherwise disciplining such employer representatives for performing supervisory, executive, or managerial functions, or

(5) by enforcing in any other manner any such rule, order, direction, or instruction.

(b) In any like or related manner restraining or coercing any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Revoke, rescind, and expunge from Respondent's records, the fines, suspensions, or expulsions from membership, or other disciplinary action, or penalty imposed upon Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, Barry Crane, or upon any other employer representative as described in paragraph 1.(a)(1) above, for working during the strike beginning on or about March 4, 1973, as a supervisor, executive, or in a managerial capacity.

(b) Reimburse Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described in paragraph 2(a) above, for the fines levied against them, with interest thereon at 6 percent per annum.

(c) Advise Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described above, in writing, that any fines levied against them, and any action suspending or expelling them from membership in the Respondent, or any other penalty imposed upon them for working during the said strike, has been revoked and rescinded, and that such fines and suspensions or expulsions, or other penalties have been expunged from Respondent's records.

(d) Post at its office and meeting halls copies of the notice attached, marked "Appendix."<sup>26</sup> Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places including all places where notices to members

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<sup>26</sup>In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."



are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Mail a signed copy of the attached notice marked "Appendix" to all Respondent's members to whom Respondent's strike rules dated February 20, 1973, were mailed.

(f) Publish the attached notice marked "Appendix" for one week (6 consecutive issues) in "Hollywood Reporter" and "Daily Variety," immediately after posting said notice.

(g) Notify the Regional Director for Region 31, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.

Dated at Washington, D. C.

/s/ Sidney J. Barban

Sidney J. Barban

Administrative Law Judge

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT RESTRAIN OR COERCE ANY EMPLOYER IN THE SELECTION OF representatives for the purpose of collective bargaining or the adjustment of grievances

- (a) by ordering, directing, or instructing any such representative not to perform supervisory, executive or managerial functions for an employer, or
- (b) by threatening any such representative with fines, suspension or expulsion from membership, blacklisting, or any other penalty for performing supervisory, executive or managerial functions, or
- (c) by charging, trying, or penalizing any such representative for working as a supervisor, executive, or in a managerial position.

WE WILL NOT in any like or related manner restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind and revoke, and expunge from our records any fine, suspension or expulsion from membership or any other penalties to the extent previously imposed on the following persons or on any other representative of an employer for the purpose of collective bargaining or the adjustment of grievances who worked as a supervisor, executive, or in a managerial position during the strike which began on or about March 4, 1973:

Hugh Benson  
Robert Blees  
Cy Chermack  
Robert A. Cinader  
Barry Crane

Jon Epstein  
David Levinson  
John T. Mantley  
Herman S. Saunders  
David Victor

**Order Correcting Record.**

United States of America, Before the National Labor Relations Board, Division of Judges, Washington, D.C.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1203-2.

Writers Guild of America West, Inc. and American Broadcasting Companies, Inc. Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1223.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc. Case No. 31-CB-1316.

Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc. Case No. 31-CB-1313.

Writers Guild of America, West, Inc. and QM Productions. Case No. 31-CB-1355.

Upon consideration of the entire record in this matter, it is ordered that the following corrections be made in the transcript of testimony in this proceeding:

| Page | Line             | Correction  |
|------|------------------|---|
| 365  | 22               | Change "closed" to close"   |
| 367  | 2                | Change "supposed" to "disposed"   |
| 554  | 18               | Take out "CROSS"  |
| 674  | 16               | Change "threat to "thread"  |
| 734  | at end of line 4 | Insert "(The document above referred to marked General Counsel's Exhibit no. 3 was received into evidence)" |
| 753  | 1                | Insert "dais" before "upon"   |

| Page | Line              | Correction  |
|------|-------------------|---|
| 773  | 20                | Change "defect" to "effect"   |
| 939  | at end of line 10 | Insert "(The document above referred to marked Association's Exhibit no. 7 was received into evidence)" |
| 949  | 20                | Change "seek" to "receive"  |
| 958  | 3                 | Change "in its" to "unit"   |
| 958  | 8                 | Change "ranking" to "writing"   |
| 977  | 19                | Insert "offering it" before "only"  |
| 979  | at end of line 5  | Insert "(The document above referred to marked Respondent's exhibit no. 5 received into evidence)"      |
| 1002 | 24                | Change "wake" to "weight"   |
| 1005 | 19                | Change "tree (?) production" to "preproduction"   |
| 1120 | 3                 | Change "ranking" to "writing"   |
| 1120 | 13                | Change "question" to "series"   |

/s/ Sidney J. Barban  
Sidney J. Barban  
Administrative Law Judge

WE WILL reimburse the persons named and described above for any fines imposed upon them for working during the strike which began on or about March 4, 1973, with interest thereon at 6 percent per annum.

WRITERS GUILD OF AMERICA, WEST,  
INC.  
(Labor Organization)

Dated..... By.....  
(Representative) (Title)



### PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 6500 Flotilla Street, Los Angeles, California.

On March 11, 1976, I served the within

APPENDIX in re: "American Broadcasting Companies vs. National Labor Relations Board" in the United States Court of Appeals for the Second Circuit, No. 75-4089, 75-4121;

on the attorneys in said action, by placing  
1 copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

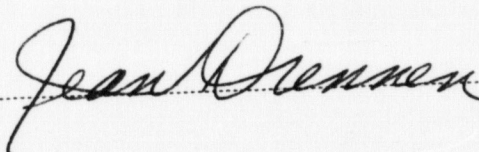
JULIUS REICH  
REICH, ADELL & CROST  
1411 West Olympic, Suite 301  
Los Angeles, Calif. 90015

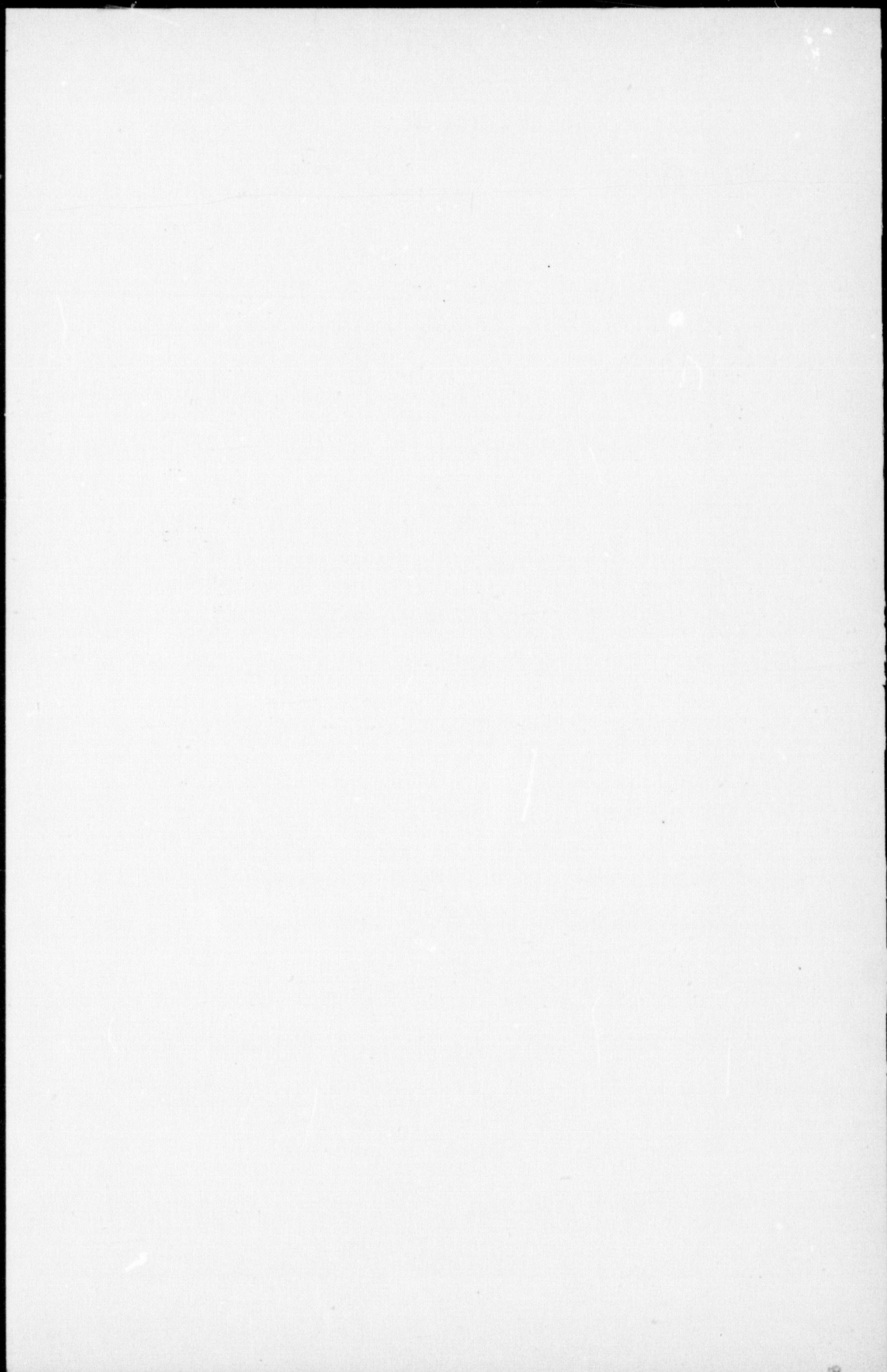
JOHN ELLIGERS  
National Labor Relations Board  
1717 Pennsylvania Ave., NW  
Washington, D. C. 20570

ANDREW B. KAPLAN  
MITCHELL, SILBERBERG & KNUFF  
1800 Century Park East  
Los Angeles, Calif. 90067

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on March 11, 1976, at Los Angeles, California





Service of the within and receipt of a copy thereof is hereby admitted this .....<sup>th</sup> day of March, A.D. 1976.

proof of Service Enclosed

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